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To view the winning entry of the 2016 KBA Student Writing Competition, written by Ashlea Hellmann, visit www.kybar.org/page/hottopics.
If you have not heard of internet-based companies like LegalZoom, Avvo or Rocket Lawyer, you soon will as these companies continue to increase the services that they provide to persons who would usually see a lawyer for such services.

Some may ask whether these types of companies are engaged in the unauthorized practice of law. In SCR 3.020, the Kentucky Supreme Court defines the practice of law to be “any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities or business relations of one requiring the services.” The Supreme Court makes an exception for a natural person drafting any instrument to which that person is a party without consideration and the appearance in small claims court of an officer or managerial employee on behalf of a corporation or partnership.

In earlier times it was easier for both lawyers and the public to identify the unauthorized practice of law. Over the years our highest court ruled that preparation of deeds, mortgages, wills, petitions to probate wills, and contracts were the exclusive domain of duly licensed lawyers. As time progressed, non-lawyers moved into areas that were once the sole province of lawyers. In the 1960s and 70s banks began to prepare mortgages. However, Kentucky’s highest court ruled that regular bank employees could not prepare mortgages, nor could in-house, or outside, legal counsel prepare a mortgage form to be completed by non-lawyer bank employees.

The United States Department of Justice Antitrust Division and the Federal Trade Commission have played an active role in bar association attempts to limit certain activities as the practice of law. The Department of Justice was a party in the Countrywide Home Loans, Inc. v. KBA case, which held that non-lawyers were not prohibited from conducting real estate closings. In 1980, the Department of Justice obtained a judgment against the Allen County, Indiana Bar Association, which had restrained title insurance companies from competing with lawyers in the business of certifying titles. The United States Supreme Court has held that federal antitrust law generally applies to the legal profession. Therefore, bar associations must be careful of antitrust implications when deciding what is or is not the practice of law.

Returning to these internet-based companies, around the same time as the Countrywide Home Loans decision, we began to see additional competition in the legal field via the computer and internet. Legal forms software became available, joining the already existing printed legal forms for wills, deeds, and similar documents. These types of forms also became available on the internet. The software and internet services differed from printed legal forms because they asked the consumer questions, and the form could be completed based on those answers.

For example, Legal Zoom calls itself “an easy-to-use, online service that help[s] people create their own legal documents.” By following various steps on the website, a “client” can create her own document. A recent check of one of these websites showed that the charge for a simple will was $69, and a lawyer is available to answer questions for an additional fee. This charge is very close to what some Kentucky lawyers charge for the same document and the internet company does not include the very valuable service of ensuring the document is properly executed and witnessed.

The end result is that now many non-lawyers provide document preparation services very similar to those provided by attorneys. The conflict between the competing interests of lawyers and non-lawyers recently played out in the state of North Carolina. In September 2011, LegalZoom filed suit against the North Carolina Bar Association in North Carolina state court seeking a declaratory judgment that it was not engaged in the unauthorized practice of law. LegalZoom later filed a suit against the North Carolina State Bar Association in federal court alleging antitrust violations by the state bar.

Continued on page 4
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While these cases were pending the United States Supreme Court decided *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 574 U.S. ___, 135 S.Ct. 1101 (2015), which involved a challenge to the Dental Board Examiners’ decision to issue cease and desist letters to non-dentists offering teeth-whitening services. The Supreme Court found that state action antitrust immunity did not apply to occupational licensing boards that are composed of market participants and not actively supervised by the state. The North Carolina State Bar Association is controlled by market participants (i.e., attorneys), and this decision may therefore apply to it.

With potential antitrust liability in the air, the LegalZoom litigation was settled on Oct. 22, 2015, when a consent judgment was entered in the state court action. That consent judgment included the following provisions:

- LegalZoom’s interactive website that assisted consumers in completing legal forms did not constitute the practice of law so long as LegalZoom complied with the requirements in the consent judgment.
- LegalZoom must provide North Carolina consumers a means to see the blank template or final document before purchasing it.
- A lawyer licensed in North Carolina must review and approve any forms used by LegalZoom, and LegalZoom must provide the name and address of that lawyer to a North Carolina consumer on request.
- LegalZoom must communicate to the North Carolina consumer that the forms are not a substitute for the advice or services of an attorney.
- LegalZoom cannot disclaim any warranty or liability, or limit damages or any remedy available to the North Carolina consumer.
- LegalZoom cannot require any North Carolina consumer to agree that venue or jurisdiction of a dispute resides in a state other than North Carolina.

After the consent judgment was entered, the North Carolina State Bar Association issued a press release stating, “After much discussion and deliberation, the State Bar concluded that entering into the Consent Judgment at this time, and in these circumstances, fulfills its statutory duties as an agency of the State of North Carolina to the State, the public-at-large, and the State Bar’s members.” It appears that the North Carolina Bar, faced with the possibility of not stopping LegalZoom and potential exposure to antitrust liability, did what it could to ensure consumers using those services would receive some measure of protection that they would not have otherwise received. In June 2016, North Carolina enacted a law that made the requirements set forth in the consent judgment applicable to “Web site providers” of these types of services.

Many people who discussed this subject at the recent American Bar Association Annual Meeting believe that the “horse has already left the barn” on the issue of whether lawyers can prevent these inter-net-based companies from providing these document preparation services. The focus has shifted from the unauthorized practice of law issue to ensuring the consumer is protected, much like what occurred in North Carolina. Bar associations can accomplish this goal, in part, by ensuring that the consumer knows he or she is not receiving services from an attorney and also that, if a dispute arises, the consumer may seek redress without unreasonable restrictions placed on the consumer by the company.

Many people claim these companies address access to justice issues by providing legal services such as deed, will, and other document preparation to persons who cannot afford an attorney. However, these companies do not offer the product for no charge. As noted above, there are Kentucky lawyers who may charge close to or below the charges listed on these websites, and the consumer has the additional benefit of face-to-face consultation with a Kentucky lawyer.

Also, these document preparation services do not help alleviate the main access to justice issue: people who cannot afford an attorney to assist them with their legal problems such as landlord-tenant issues, divorce and child custody, debt collection, and criminal matters. A company offering to provide a will, deed, or articles of incorporation for substantially the same cost as some Kentucky lawyers is merely competing with lawyers.

What does this mean for Kentucky lawyers? It means that as the legal market continues to change, we will face more competition in the legal market. Lawyers practicing in these areas of law will be challenged to show consumers (i.e., potential clients) why they should choose a lawyer to assist with these matters. Of course, the value of involving a lawyer in preparing these documents and avoiding possible pitfalls is readily apparent and a better value for most, if not all, consumers. The challenge is delivering this message and being heard above the internet noise and advertising created by these well-funded competitors.

When the opportunity presents itself, all of us should advocate that consumers will obtain a better value for these types of services if they use a Kentucky lawyer.

ENDNOTES
7. *Federal Intermediate Credit, supra.*
11. *G.S. 84-2.2*
The CLE programming was excellent!

The convention is probably the best way to network with attorneys throughout the Commonwealth in an academic setting.

Everything I attended was very informative.

What I like best about the convention is seeing people and learning new things.

The app was very useful and handy, a great addition.

There was nothing I didn’t like.

The CLE programming was excellent!

2017 KBA Annual Convention
Owensboro Kentucky
June 21-23, 2017
Stay tuned for more information
**Q & A**

**with KBA President Mike Sullivan**

**BY JAMES P. DADY**

**M I K E S U L L I V A N** is an attorney with Sullivan, Mountjoy, Stainback & Miller, P.S.C., in Owensboro, Ky., and currently serves as president of the Kentucky Bar Association (KBA). Sullivan’s areas of concentration include insurance defense, employment law, construction law, business services, real estate and personal injury. He received a B.A. from the University of Notre Dame in 1988 and a J.D. from the University of Kentucky College of Law in 1991. Sullivan served as special justice to the Kentucky Supreme Court in *Commonwealth v. Davidson*, 277 S.W.3d 232 (Ky. 2009). He has been a member of the Kentucky Bar Association Board of Governors from 2007 to 2013; serving as vice-president in 2014 and president-elect in 2015. He was a member of the Kentucky Bar Association Continuing Legal Education Commission from 1998 to 2004 and a member of the Leadership Kentucky Class of 1998. He served on the Board of Directors for the Greater Owensboro Chamber of Commerce from 2002 to 2006 and was chair in 2005. Sullivan has served as legal counsel to Greater Owensboro Economic Development Corporation from 2006 to present.

The Bench & Bar invited President Sullivan to answer the following questions. His responses are reprinted in here in full.

**PRESIDENTS OF THE KBA TEND TO WANT TO STRIKE A THEME FOR THEIR TENURE. IS THERE A TREND OR DYNAMIC IN THE PROFESSION OR IN SOCIETY AT LARGE THAT YOU PLAN TO EMPHASIZE DURING YOUR PRESIDENCY?**

Earlier this year, the KBA adopted a strategic plan that involved a survey of our members, significant work by the KBA Strategic Planning Committee, and considerable input from the Board of Governors. We will work the plan and advance the primary objectives of that plan.

Those objectives include assisting our Supreme Court in assuring that the state judicial branch of government is adequately funded to serve the citizens of this Commonwealth who depend on it every day to provide justice, be it in family matters, civil disputes, probate, or criminal matters. This also includes adequate funding for prosecutors and public defenders to ensure proper administration of the criminal justice system. The KBA assisted Chief Justice Minton in budget efforts this past session. At the end of the session, after hard work by all involved, funding of the judicial branch of government was greatly increased from the original version passed by the House of Representatives. The KBA will continue to support the Chief Justice and our Supreme Court to obtain adequate funding for our judicial branch of government.

The KBA plans to bolster its practice management resources. With advances in technology moving at an ever faster pace, it has become difficult for many lawyers to keep up with what are now basic or expected administrative capabilities for their office and the practice of law. This is especially true of new lawyers just starting a practice and more seasoned lawyers who may not have the time or resources to keep up with these changes. As part of its strategic plan, the KBA will explore how it can better serve the practice management and technology issues of its members by making more resources available to them.

The KBA will also maintain its efforts in continuing legal education, attorney discipline, and the other established programs of the KBA that serve its members and the public.

**THE JUDICIAL APPROPRIATION OF THE STATE BUDGET WAS PASSED THIS YEAR ONLY AFTER SOME CONCERTED LOBBYING BY CHIEF JUSTICE MINTON, AND OTHERS. IS THERE SOMETHING THE WORKADAY KENTUCKY PRACTITIONER CAN DO TO PLOW THE FIELD FOR AN EASIER, BIGGER HARVEST IN THE NEXT BUDGET SESSION?**

As I previously mentioned, the KBA has supported and will continue to support Chief Justice Minton’s efforts to adequately fund the judicial branch of government. I believe Chief Justice Minton has stated that the judicial branch experienced cumulative budget reductions of 49 percent since 2008, and state court judges last saw a pay raise eight years ago. Our members can assist in this effort by either speaking with or writing their state legislators to communicate the need to adequately fund the judicial branch of government.

**IS THERE A NEED, PARTICULARLY IN KENTUCKY, THAT THE LEGAL PROFESSION COULD BE DOING A BETTER JOB IN ADDRESSING?**

For years, access to justice issues have existed where the legal needs of low-income citizens of the Commonwealth have not been adequately served. The KBA will continue to work with the
Kentucky Supreme Court to improve our citizens’ access to justice.

The legal profession can address this issue by providing pro bono services to people in their areas who need the services of a lawyer, but cannot afford to pay for one. Lawyers can visit www.kyjustice.org/probono to see pro bono opportunities in their area of Kentucky.

KBA members can also continue to contribute to the Kentucky Bar Foundation, which provides grants to numerous organizations that serve some of the most vulnerable and disadvantaged persons in our justice system. Each KBA member will see on his or her dues statement the option to make a voluntary $30 Sustainer Contribution to the Kentucky Bar Foundation. In 2015, over 5,000 Kentucky lawyers made that donation, and the amount raised exceeded $150,000. We hope the lawyers of Kentucky can do as well, or better, this year.

OWENSBORO IS A SUBSTANTIAL TOWN, BUT IT IS ALSO A SORT OF REGIONAL HUB FOR A LARGE SWATH OF WESTERN KENTUCKY, HOW DO YOU THINK THE COURT SYSTEM AND THE LEGAL PROFESSION ARE DOING IN DELIVERING LEGAL SERVICES IN RURAL KENTUCKY, WHICH MAKES UP ABOUT HALF THE POPULATION OF THE COMMONWEALTH?

I believe this issue of providing legal services in rural communities is tied to the access to justice issue. We have KBA members practicing law in all of our counties. In addition, given today’s technology, it is not difficult for lawyers in distant communities to practice in every Kentucky county. So, those people with resources, regardless of their location or the location of their legal problem, can find a lawyer to assist them. It is those people in rural communities that cannot afford an attorney that are underserved, and we must continue to work to find ways to meet their needs, which would include doing the things mentioned in my answer to the previous question.

GIVEN THE ECONOMICS OF THE PROFESSION, WOULD YOU RECOMMEND TO A BRIGHT, TALENTED, YOUNG PERSON TO FIND A CAREER IN THE LAW?

Yes, I would. The profession of law has never been a guaranteed road to financial success. But, today and tomorrow, as always, there is opportunity for a successful legal career for those who wish to serve in this profession.

Certainly, our profession has changed over the years due to numerous factors, including lawyer advertising, the internet, advances in technology, competition from other lawyers within Kentucky and from other states, and competition from outside the profession. At the same time, opportunities for good lawyers still exist, and I would encourage any young person with a passion for the law to pursue that passion.

THE KBA CONVENTION IS IN OWENSBORO IN 2017. CAN YOU ADVISE PROSPECTIVE CONVENTIONEERS ABOUT LOCAL ATTRACTIONS AND POINTS OF INTEREST; THINGS YOU REVERE ABOUT YOUR CITY?

Owensboro is very excited to host the KBA annual convention June 21-23, 2017. The old Executive Inn that many remember has been replaced by a new, world class convention center and two brand new hotels located right next to it, each of which has accommodations our members are used to enjoying when coming to our convention.

People who have not recently visited Owensboro, our state’s fourth largest city, will be pleasantly surprised by the improvements to downtown and riverfront Smothers Park that exceed $100 million in public and private investment. There are superb restaurants both downtown and throughout Owensboro, where visitors can enjoy both fine dining and our world famous barbecue. We also boast the second largest art museum in Kentucky, several golf courses and parks for recreation, and the International Bluegrass Music Museum.

THE ADVANCE OF THE NATIONALLY-MARKETED, DO-IT-YOURSELF LEGAL SERVICES AND DOCUMENT KITS ADVANCES. CAN YOU GIVE ADVICE TO THE WORKADAY KENTUCKY PRACTITIONER ON HOW TO COMPETE WITH THEM?

These companies have changed the legal landscape, offering basic
legal instruments such as wills, deeds, and corporate/LLC formation documents. However, I believe the prices they charge for these documents are not significantly less than the price many Kentucky lawyers charge for similar services, plus the consumer obtains from a Kentucky lawyer the benefit of legal advice for his or her particular situation, which one cannot obtain via the internet, except for an additional charge. At the same time, I acknowledge the difficulty of competing with these companies and their millions of dollars of capital investment.

As a legal community, we need to inform the consumers of the benefit of obtaining these services from a Kentucky lawyer. We may also need to study whether these companies are fairly dealing with the public in Kentucky. For example, do the companies accurately describe the services and products they do, and do not, provide? Also, do the companies offer a fair procedure for customers to pursue if the companies provide a defective service or product?

YOU PRACTICE WITH YOUR FATHER, RON. HOW DID HE CONTRIBUTE TO YOUR MOTIVATION TO BECOME A LAWYER, AND YOUR EVOLUTION AND DEVELOPMENT AS A LAWYER?

Without hesitation, I can tell you that practicing with my father has been the most rewarding aspect of my legal career. I certainly would not have had as keen an interest in the practice of law without seeing my father in action at an early age, from the record room on a Saturday morning, to running down a witness in a rough part of town on a Friday night, to an oral argument before the Kentucky Supreme Court.

When I started practicing law with my father, we both enjoyed this opportunity to practice cases through trial, and sometimes appeal, together. I have also enjoyed practicing with my other partners over the past 25 years. I have been fortunate to benefit from their wisdom and experience.

In addition, my father was a member of the KBA Board of Governors when I was in law school, and he instilled in me a sense of service to the bar and to our community. This sparked my interest in bar service, which culminated in my decision to seek the position of KBA president. I rely on him for advice in my practice and in my service to the bar.

HOW IS THE KENTUCKY BAR ADAPTING TO THE JUDICIAL BRANCH’S e-FILING INITIATIVE? DO YOU ENVISION A TIME IN THE NOT-TOO-DISTANT FUTURE WHEN e-FILING WILL BECOME MANDATORY IN KENTUCKY STATE COURTS?

I can only attest to my personal experience, and it has taken some time to adjust to it, but I welcome the e-Filing initiative. Once you become familiar with the process, it only takes a couple of clicks to file a document, and it is easier than walking it to the courthouse. I do not know if it will become mandatory, but federal courts have had mandatory e-Filing for years, and I have not seen any issues with it in federal court.

ABOUT THE AUTHOR

JAMES P. DADY is a litigator with Gerner & Kearns Co., LPA at its office in the historic James Taylor Mansion in Newport.

He is the editor of the Bench & Bar, a frequent contributor to the magazine, and chairman of the KBA’s Communications and Publications Committee.
On June 30 of each year, terms expire for seven (7) of the fourteen (14) Bar Governors on the KBA Board of Governors. SCR 3.080 provides that notice of the expiration of the terms of the Bar Governors shall be carried in the *Bench & Bar*. SCR 3.080 also provides that a Board member may serve three consecutive two-year terms. Requirements for being nominated to run for the Board of Governors are contained in Section 4 of the KBA By-Laws and the requirements include filing a written petition signed by not less than twenty (20) KBA members in good standing who are residents of the candidate’s Supreme Court District. Board policy provides that “No member of the Board of Governors or Inquiry Commission, nor their respective firms, shall represent an attorney in a discipline matter.” In addition any member of the Bar who is considering seeking or plans to seek election to the Board of Governors or to a position as an Officer of the KBA will, if elected, be required to sign a limited waiver of confidentiality regarding any private discipline he or she may have received. Any such petition must be received by the KBA Executive Director at the Kentucky Bar Center in Frankfort prior to the close of business on the last business day in October.

**THE CURRENT TERMS OF THE FOLLOWING BOARD MEMBERS WILL EXPIRE ON JUNE 30, 2017:**

1st SCD – Michael M. Pitman, Murray  
2nd SCD – J. D. Meyer, Owensboro  
3rd SCD – Howard O. Mann, Corbin  
4th SCD – Amy D. Cubbage, Louisville  
5th SCD – Mindy Barfield, Lexington  
7th SCD – Earl M. “Mickey” McGuire, Prestonsburg

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**2017 Distinguished Service Awards**  
**Call for Nominations**

The Kentucky Bar Association is accepting nominations for 2017 Distinguished Judge and Lawyer, Donated Legal Services and Bruce K. Davis Bar Service Awards. Nominations must be received by December 30, 2016. If you are aware of a Kentucky judge or lawyer who has provided exceptional service in these areas, please call (502) 564-3795 to request a nominating form or download it from our website at www.kybar.org.

**DISTINGUISHED JUDGE AWARD**  
&  
**DISTINGUISHED LAWYER AWARD**

Awards may be given to any judge or lawyer who has distinguished himself or herself through a contribution of outstanding service to the legal profession. The selection process places special emphasis upon community, civic and/or charitable service, which brings honor to the profession.

**DONATED LEGAL SERVICES AWARD**

Nominees for the Donated Legal Services Award must be members in good standing with the KBA and currently involved in *pro bono* work. The selection process places special emphasis on the nature of the legal services contributed and the amount of time involved in the provision of free legal services.

**BRUCE K. DAVIS BAR SERVICE AWARD**

Many lawyers take time from their practices to provide personal, professional and financial support to the KBA. This award expresses the appreciation and respect for such dedicated professional service. All members of the KBA are eligible in any given year except for current officers and members of the Board of Governors.
VOTE-BuyING IN KENTUCKY
The Clay County Example

VOTE-BuyING IN KENTUCKY
Vote-buying has existed in Kentucky for probably as long as there have been contested elections. Indeed, the reasons for this unlawful practice are varied and typically involve either the payment of dollars for votes or other conduct such as the spreading of black top and gravel during election time. The purpose of this article is to summarize and give some legal context to vote-buying prosecutions in Kentucky. The author has tried several of these cases to verdict and will share personal observations from those ordeals.1 United States v. Adams, et al. which we commonly refer to as the Clay County voter fraud case, is a good example of how vote-buying operations have been conducted.2

CLAY COUNTY
On July 9, 2009, a group of individuals, who included elected officials, educators and private citizens, were named in a 13 count indictment where the principal charge involved a conspiracy to violate the Racketeer Influenced and Corrupt Organizations statute (“RICO”), 18 U.S.C. § 1962(d). Most of us associate criminal RICO prosecutions with organized crime activity that typically involves gambling, drugs, or even prostitution. A successful RICO prosecution requires the existence of an enterprise. In this case the enterprise was not some obscure business such as a pizza parlor in the northeast which fronts an illegal gambling or drug business. Instead, the enterprise was the Clay County Board of Elections whose purpose, as alleged by the government, was to exert influence over the selection of precinct workers who supervised voters at the polls, all ostensibly for the purpose of allowing vote-buying in Clay County. The government’s basic theory stated that it was necessary for the defendants to buy votes in order to win elections so that the victors could control local politics and ultimately local jobs in the school and court systems.

Specifically, these eight defendants included a former superintendent of schools, a sitting circuit judge, a sitting county clerk, a magistrate, two election officials and a businessman and his wife. This prosecution stemmed from the defendants’ participation in a vote-buying scheme that lasted from 2002 to 2007, and ran through three election cycles.

The government obtained pleas of guilty and cooperation from many other participants in this vote-buying scheme. This case is an example of a well-organized effort to buy votes and the length to which the U.S. Attorney will go to prosecute such schemes.

The trial took place in U.S. District Court in Frankfort. This author was fortunate to have teamed with a group of very able defense attorneys who represented the eight individual defendants. This author’s client was the former superintendent of schools in Clay County. The prosecutors were extremely well prepared and certainly knew their case. The trial Judge likewise was well prepared.
The vote-buying scheme, as set forth by the prosecutors, worked as follows: it was decided among the participants that various candidates for office would pool money and that these candidates and their supporters then paid “vote haulers” to bring voters to the polls. While vote hauling is legal in Kentucky, in this instance it was charged that in addition to hauling the voters to the polls, the candidates and their accomplices would also bribe those voters to vote for a particular set of candidates—commonly referred to as “slates” or “tickets.” To make sure that these voters actually voted for the correct slate, a co-conspiring election official and poll worker would review voter’s ballots—a practice known in this case as “voting the voter.” Once the proper slate was confirmed, a token such as a raffle ticket or a marker would be given to the voters to confirm that they did in fact vote for the proper slate. A voter who presented the recognized token or raffle ticket would then be paid by another conspirator in a location away from the voting poll. The conspirator would then retain lists of compliant voters to avoid double payments and to keep track of votes that might be available for purchase in future elections. The success of this operation literally depended on having a vote buyer in the polling booths.

The creativity of the vote buyers was not limited to the example in the preceding paragraph. For example, absentee voting and voter assistance forms helped minimize the difficulty of checking paid voter’s ballots. In this situation, a co-conspiring vote buyer would be permitted in the voting booth with the idea that they were assisting a voter who had difficulty in completing a ballot. This can be a legitimate practice and is available when the voter needs assistance because of a physical impairment. But the vote-buyers used what was intended as an accommodation for the handicapped voter as a means to learn unlawfully whom the voter, so “assisted,” “chose.” In other words, the vote-buyers wanted to make sure the voters taking the money actually voted for who they were paid to vote for.

Things got more complicated when electronic voting machines were introduced to Clay County in the 2006 election. In order to keep this method of vote-buying alive given the new technology, these vote buyers, typically poll workers, would mislead a voter into thinking they did not need to click the “cast ballot” on a screen which appeared after the voter had selected the candidate for whom they wished to vote. The poll workers would then go into the voting booth after the voter left and change the electronic ballot to reflect the slate before casting the ballot of their own choice.

As stated earlier in this article, a fundamental requirement of a RICO prosecution is the existence of an enterprise. In this situation the enterprise was the local Board of Elections which not only appointed the election officials, but also had responsibility of certifying the results of all Clay County elections. This Board was composed of the county clerk, the sheriff, and a Republican and a Democrat election commissioner. The two commissioners (who were also defendants in this case) were responsible for appointing election judges and other officials of the various precincts.

The activity involving the former superintendent of schools serves as a good background to why this activity took place. A large amount of the vote-buying began and ended with the 2002 primary election for County Clerk and other offices in Clay County. At trial, it was established that for many years one family had “[p]retty much ruled” Clay County, Kentucky. The defendant Superintendent of Schools, for reasons personal to him, opposed this ruling family in part because the family patriarch—who held the office of county clerk and ran for re-election—was alleged to have been a notorious drug dealer. One witness for the government explained “[i]t was a power struggle in the county” and that the former superintendent and clerk were known to “hate each other.” The Clay County vote-buying operation reached its pinnacle during the May 2002 primary election, when voter turnout was exceptionally high. The superintendent backed the opponent of the incumbent county clerk—the family patriarch—and as part of this effort, a group of the insurgent candidate’s allies met at a local garage where four of the defendants gathered to “pool” money for the upcoming primary election. The evidence at trial established that tens of thousands of dollars were pledged and there was testimony that the amount was almost $200,000, a very large sum for what is essentially a rural county. On March 25, 2010, after the trial had lasted in excess of seven weeks, the jury found each of these defendants guilty of all charges.

The defendants received significant terms of imprisonment after their convictions, some in the range of 25 years or more.

On July 17, 2013, a unanimous panel on the U.S. Court of Appeals for the Sixth Circuit reversed each defendant’s convictions on all counts and remanded the case back to the District Court for a new trial. The basis for the reversal was that the Sixth Circuit found that the prosecution was permitted to turn what could have been a straight-forward vote-buying case, even one with a RICO charge, into an impermissible examination of drug dealing and corruption in Clay County which stretched back into the early 1980s.

For example, as part of the government’s case in chief, testimony was taken from three drug dealers regarding their activities in the 1980s and 1990s in Clay County. One of the drug dealers, an individual named Kenny Day was asked about another drug dealer named Oscar Hubbard to whom he sold marijuana. Day then tried to link the drug-dealing Hubbard to the Superintendent of Schools by testifying that Hubbard was the Superintendent’s brother-in-law.

The Sixth Circuit criticized this testimony in a footnote that said: We note that the focus of Day’s (proffer) testimony progressively shifted from vote buying to drug dealing through the District Court proceedings. In earlier proceedings, the drug dealing evidence was presented as being tangential to Day’s criminal history. At trial, however, the government opened its case with testimony from Day about how he sold tons (in the literal sense) of marijuana.
The Sixth Circuit further held:

Furthermore, we find it troubling that the government’s presentation of defendants’ “association” with drug dealers (with the exception of Jones) appears to be based largely on innuendo. The government did not limit this drug dealing testimony to just from Day, but also include a couple of other characters named Lewis and Lawson, both of whom were convicted drug dealers. Lewis, Day and Lawson testified for the government in hopes of receiving a reduction in their sentences for earlier drug dealing. The Sixth Circuit again criticized this extensive use of drug evidence as it did “not qualify as background evidence because it is not inextricably intertwined with the charged offense.” In other words, despite the pervasive proof of drug dealing in this community, there was no way to link or connect this activity to vote-buying.

Evidence was also taken from an older “Inside Edition” television video which described drug activity in Clay County. The Sixth Circuit ruled:

Much like the evidence of drug dealing from the testimony of Day, Lewis and Lawson, the video was composed mostly of information about marijuana growing in Clay County.

The Sixth Circuit then concluded that the District Court likewise improperly admitted the “Inside Edition” video.

There was further evidence regarding witness intimidation and the burning of a mobile home that was admitted at trial. The government conceded on appeal that none of this testimony could be connected to any defendant and the Sixth Circuit ruled that testimony should not have been admitted. Finally, the District Court made some substantive changes to the government’s proposed audio transcripts (there were many secret recordings made by cooperating individuals) which the Sixth Circuit likewise found to be in error.

In reversing the conviction and despite the clear proof of vote-buying activity, the

Sixth Circuit held:

Defendants argue that when combined, the prejudice from these errors necessitates a new trial. We agree.

Although no one of the six identified errors may warrant reversal on its own, the cumulative effect of these errors rendered defendants’ trial fundamentally unfair in violation of their rights to due process.

This prosecution ended after remand when each defendant plead guilty to RICO and was sentenced to time served. Each of the eight defendants had served approximately 40 months at the time of the second sentencing. However, this sentence of time served was a dramatic reduction from what the Court had previously imposed. For all practical purpose, the superintendent and circuit court judge initially received what was probably a life sentence given their age. They are now retired and living with their families.

The U.S. Attorney’s Office enjoys an arsenal of statutes which can be used to successfully prosecute vote-buying in Kentucky. The RICO theory of prosecution is just one of the statutes and its use was upheld in the Clay County case. This case seems to stand for at least two propositions: 1) despite excessive testimony regarding illegal vote-buying, the Court of Appeals will reverse when prejudicial testimony of unconnected activity is admitted into evidence; and 2) the U.S. Attorneys do not view vote-buying as a victimless crime and will continue to prosecute in cases they deem appropriate.

ENDNOTES

3. “Vote-buying” is to be distinguished from “vote hauling.” Paying individuals to transport voters to the polls is not illegal in Kentucky if the payments are duly reported to state election officials and the transportation is for a legitimate purpose. Ky. Rev. Stat. Ann § 119.205(5); United States v. Turner, 465 F.3d 667, 669 (6th Cir. 2006).
4. Those individuals who sell their votes are rarely prosecuted, although that conduct is punishable as a Class D felony pursuant to KRS §119.205(2) which states: “[a]ny person who solicits, accepts, or receives any such expenditure as payment or consideration for his vote, or the withholding of his vote, or to vote for or against any candidate or public question at an election shall be guilty of a Class D felony. (emphasis added).”
5. Adams, 722 F.3d at 798.
6. Id. at 799.
8. Adams, 722 F.3d at 806.
9. Id. The clerk, who later pled guilty to drug trafficking, did testify at this trial as a cooperating witness for the government.
10. Id.
11. The defendants were also charged, among other things, with a violation of the Money Laundering Statute. The government later confessed error as those money laundering convictions rested on an invalid theory. The money laundering charges were dismissed. Adams, 722 F.3d at 801.
12. All defendants were detained immediately after their conviction at trial. The sentences imposed were significant as the RICO Sentencing Guidelines are high.
14. Id. at 813 n.16.
15. Id. at 814.
16. Id. at 810.
17. Id. at 821.
18. Id.
19. Id. at 822.
20. Id. at 832.
21. Id.

ABOUT THE AUTHOR

R. KENT WESTBERRY is a partner in the Louisville firm of Landrum & Shouse LLP. He practices in the area of civil and criminal litigation. Westberry is a former president of the Kentucky Bar Association (2004-2005) and a former Assistant United States Attorney for the Western District of Kentucky.
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The Kentucky Registry of Election Finance ("KREF" or "Registry") is an independent state agency which informs the public about the role of money in political campaigns. The Registry provides public access to data on contributions and expenditures in accord with the campaign finance law, K.R.S. Sec. 121.005, et seq. The Registry tracks political candidate and committee financial data, audits statewide candidates, responds to requests for advisory opinions, investigates complaints, and adjudicates civil violations of the campaign finance law.

Life at the Registry became considerably more complicated after Citizens United v. FEC (2010) 558 U.S. 310. The decision opened a new frontier in campaign finance by its finding that the U.S. Constitution permits corporations and labor unions to make independent expenditures in campaigns in the same manner as individuals. The decision put into doubt the continuing viability of Section 150 of the Kentucky Constitution, which bans corporate contributions.

The Kentucky Chamber of Commerce sought to measure the new terrain after Citizens United shortly after it was decided. The Registry responded with Advisory Opinion 2010-001, which discusses the effect of Citizens United on Kentucky campaign finance law, including registration and reporting requirements for "unauthorized campaign committees."

Picking up the argument, Citizens for Eastern Kentucky Government registered as Kentucky's first unauthorized campaign committee, and requested the Registry to clarify that contributions to an unauthorized campaign committee are not subject to limits as to sources and amounts. The Registry had previously reached this conclusion in Advisory Opinion 2010-001. Any room for doubt about this issue was removed by SpeechNow v. FEC, a decision of the U.S. Court of Appeals for the D.C. Circuit. Citing Citizens United, the Court ruled that the government has no anti-corruption interest in limiting contributions to a group that makes independent expenditures only.

Citizens for Eastern Kentucky Government spent less than $30,000 in the 2010 primary election cycle in an attempt to oust a Pike County magistrate. The local newspaper editor learned from data filed with the Registry that one of the committee's donors was a business linked to the local mayor, and reported it. Displeased, the mayor confronted the editor in a bar, punched him in the face, and then rode off from the scene dressed in black, on a bicycle. Eventually, the belligerents resolved their differences. Did the U.S.
Supreme Court envision the reach of *Citizens United* into mountain politics when it was decided?

Some election law practitioners complain that the term “unauthorized” connotes something disreputable, even unlawful. But in Kentucky’s campaign finance law, “unauthorized” is a term of art. It means that the subject committee makes expenditures without the authority of a candidate.

“Coordination” is not defined in Kentucky’s statutory campaign finance law, nor with precision in case law. As applied in administrative proceedings of the Registry, proof of coordination in campaign activities requires more than showing a prior communication, meeting, or consultation. The evidence must show that a candidate or his agent consulted with the spender “regarding the content, timing, place, nature or volume of communications to be made.”

Such was the case when Truth for American Workers (“TFAW”) sought to influence voters in a 2010 legislative race. TFAW contacted the candidate through an intermediary and told him to expect “friendly” videographers to record him while he campaigned. The initial footage proved useless, however, because it showed the candidate campaigning in a neighborhood outside the district.

TFAW arranged another video shoot. The second round began with a neatly groomed candidate sitting on a front porch while the videographer focused the camera. The candidate walked up to the front door of the same home, ostensibly campaigning. Because of the candidate’s material participation, cooperation, and consent to the videotaping for a TFAW television ad, the Registry found there to be coordination and imposed a civil penalty on both the candidate and the committee.

More than five years after *Citizens United*, the Registry continues to grapple with increasingly complex legal questions resulting from the decision. For example, although corporate contributions have been banned for 125 years by Section 150 of the Kentucky Constitution, the U.S. District Court for the Eastern District of Kentucky [C.A. # 3:15-CV-42 GFVT] ruled recently that the Registry may no longer enforce the ban on corporate contributions in a manner that results in unequal treatment among corporations, unions, and limited liability companies. The decision means that the Registry must consider the term “corporation” to mean any corporation, company, partnership, joint-stock company, or association as they are listed in K.R.S. Sec. 446.010(11). So the constitutional ban on corporate contributions now encompasses unions, LLCs, and LLPs. Yet these same entities may administer permanent committees (PACs) and in so doing are permitted to pay administrative expenses of a sponsored PAC.

Given the rapid evolution in federal jurisprudence since *Citizens United*, what the future holds in campaign finance is anyone’s guess. It is safe to say that there will be more speech in elections. Talk may be cheap, but speech isn’t free.

**ABOUT THE AUTHORS**

**CRAIG C. DILGER**, chairman of the Kentucky Registry of Election Finance, has served on the Registry Board since June 1, 2005. He is currently serving his third term as a board member and his ninth consecutive term as Registry chairman. A native of Louisville, Dilger is a member of the Business Litigation, Labor and Employment, Healthcare and Sports Practices with the law firm of Stoll Keenon Ogden PLLC. He focuses primarily on litigation involving education, employment, sports, and complex white collar criminal defense law. In addition to a busy law practice and his duties as Registry chairman, Dilger is a member of the Council on Governmental Ethics Laws (COGEL), and a frequent guest speaker at the Annual COGEL Conference.

**EMILY DENNIS** serves as general counsel for the Kentucky Registry of Election Finance, a position she has held since May 2008. Prior to her appointment at the Registry, Dennis served as a staff attorney for the Department of Corrections, where she represented the agency on open records issues and prison disciplinary appeals. She began her government service at the Cabinet for Economic Development, focusing on open records law, business incentives, legislation, and state contract procedures. Dennis is a member of the Council on Governmental Ethics Laws (COGEL) and a former member of the State Archives & Records Commission. When not practicing law, she runs a horseback riding stable on her family farm near Harrodsburg.

**ENDNOTES**

Modern Lexington's urban county government earns accolades as a progressive, high-functioning, non-partisan polity.

But in its embryonic days more than 40 years ago, modern Lexington staged a mayor’s race decided by a margin small enough to be nearly invisible. The outcome was determined by a judge, and the decisive proof in the case was so unusual that it proved James Mulligan’s adage, approximately: ‘Politics – the dangdest in Kentucky.”

The story is told in “The Spider Election,” by H. Foster Pettit, which was completed shortly before his death in 2014.

Lexington was in the midst of its merger with Fayette County, and the 1973 contest for mayor of the merged entity was between Mr. Pettit and James Amato, the popular Lexington police-court judge of the day. 1

The rule of thumb on where the old Lexington met its boundary with Fayette County had been that the city ended in a mile’s radius of the courthouse. But with time and development Lexington had spread itself into an illogical patchwork as some of the growth was annexed to the city while neighboring acres stayed in the county.

There was a tangle of shortcomings and duplication between the two jurisdictions in the providing of public services. There were more than 100 outdoor privies in use in the city limits in the early 1970s. Merger between city and county was advanced as a necessary reform, and the enabling law sponsored by Lexington state representatives Bart Peak and Bill McCann was passed by the General Assembly in 1970.

Mr. Pettit ran for mayor of the old city in 1971 on a slate with four candidates for council. Their platform was to bring about merger; in effect to expand the administrative jurisdiction of the city to include the county, and to end the authority of the county administration.

Mergers had been approved for Nashville and Davidson County, Tennessee, in 1963 and for Indianapolis and Marion County, Indiana, in 1970, so there were precedents for the concept regionally, but in Kentucky it was a journey into the untried.

Perhaps dispositively, the merger was supported by both Mr. Pettit and the incumbent County Judge Robert F. Stephens. The voters agreed, emphatically. Merger passed in a referendum in Fayette County in 1972 by a 70-percent margin.²

The next year, Mr. Pettit sought to expand his administrative portfolio from the old City Hall on Walnut Street to the new county-wide mayoralty. James Amato filed against him, and a tough campaign was joined.

The reader of Mr. Pettit’s book may perceive that his blood was stirred 40 years later by the memory by what was said about his stand on taxes. It was a hard-fought battle.
On election night, he was thought to have lost to Mr. Amato by 112 votes out of more than 40,000 cast.

_The Lexington Herald_ ran on editorial the following Sunday headlined:

**Amato Administration Faces Challenges**

But then …

George Mills, campaign chairman for Mr. Pettit, had thought anomalous the returns from Aylesford precinct which were cast at Maxwell Street Elementary School. Aylesford came in for Amato by two to one, while Pettit was carrying adjoining and demographically similar precincts by two to one.

Pam Miller, who won a seat on the new council, had carried Aylesford by two to one in the primary election, but lost it by three to one in the general. Ms. Miller’s campaign treasurer, Raymond Cox, telephoned Mr. Mills the day after the election to share the idea that the Aylesford vote was “really odd.”

The Pettit forces included a number of lawyers, and some of them worked up a theory of the case and mounted an election contest, which was rolled to Fayette Circuit Judge James Park, Jr.

Mr. Pettit’s lawyers argued that an innocent error in the Fayette County Clerk’s office caused the paper strips identifying the candidates on the front of the Aylesford machine to be affixed incorrectly, and that thereby Amato’s votes should be counted as Pettit’s, and vice-versa. By this theory, reversing the candidates’ totals in Aylesford would tip the election to Mr. Pettit by 54 votes.

The Amato forces engaged an expert who testified that the Aylesford machine could have been tampered with after the first count was recorded, and that therefore the most reliable Aylesford count was the one taken on Election Night, that it should stand, and Amato be declared to have won the election.

Fatefully, Judge Park inspected personally the Aylesford voting machine before issuing his decision.

To accept the Amato theory that the Aylesford machine could have been tampered with after the first count, Judge Park found, he would have had to credit as true an unlikely series of events:

The theoretical tamperer would have had to know the Aylesford machine’s serial number, know the location of the keys to the voting machines in the Sheriff’s Office, identify the correct key, and either break in after hours to where the machine was kept or opened the machine in the light of day in front of witnesses. The tamperer would have had to know how to open the machine and manipulate the ballot-label strips to Pettit’s advantage.

Then the tamperer would have had to reverse course, re-fasten all the locks he had somehow opened, then replace the voting-machine’s key in the Sheriff’s Office all the while going undetected, before or after his felonies.

Judge Park’s inspection of the Aylesford machine revealed a commonplace piece of evidence so irresistible as to be critical: a spider had spun its web across the close of the machine that would have been opened by the theoretical tamperer, “[…] and the insect nest or cocoon would have been destroyed,” the judge wrote.

The judge accepted the Pettit theory, finding that an innocent error in the county clerk’s office in affixing the Aylesford machine’s candidates’ name strips effectively reversed the voters’ intended choices. Mr. Pettit, the judge found, was the winner in Aylesford, and therefore countywide, by 54 votes, the margin having been provided by Aylesford. The result was, then:

- Pettit: 20,368, 50.006636%
- Amato: 20,314, 49.99336%

Judge Park’s decision was upheld unanimously within six weeks by the Kentucky Court of Appeals, then the Commonwealth’s highest, in an opinion of terseness and authority and some solicitude toward Mr. Amato. Chief Justice S. Palmore wrote

> With all the legal technicalities out of the way, the simple question in this whole complicated case is, for whom in fact did the majority cast its vote in the mayor’s race on November 6, 1973? With the best means humanly available to the trial court answered that question, and we are unable to find an error of substance….

And

> The sufficiency of the evidence to support the trial court’s findings with respect to the integrity of the Aylesford machine and the occurrence of the mistake is a question upon which there may be (and obviously is) a difference of opinion. Ours may not be the best, but by force of law it is the last. […] We think it would have been very difficult for any trial judge to arrive at findings contrary to those made by the trial court in this case. 4

Robert F. Stephens, who sacrificed his authority as county judge...
in support of the merger, was elected Kentucky Attorney General in 1975. Mr. Stephens served as Chief Justice of the Kentucky Supreme Court, and as Kentucky Justice Secretary. He died April 13, 2002, at age 74. The Circuit and District Court complex at Main and Limestone streets is named for him.

James Amato was elected mayor to succeed Mr. Pettit, and served until 1982. He is retired and lives in Lexington.

Pam Miller was elected to four terms on the Urban County Council in 1973, and as vice mayor succeeded Scotty Baesler as mayor when the latter was elected to Congress in 1993. Ms. Miller was elected to two terms as mayor, during which she helped to develop an urban greenspace plan and worked for better police-community relations in the aftermath of the shooting death of a black teenager by a white officer.

Ms. Miller since her time as mayor has served as chair of the Prichard Committee for Academic Excellence and of the Kentucky Council on Higher Education.

Judge Park served as a Fayette Circuit Judge from 1969 to 1976, and as a member of the Court of Appeals from 1976 to 1978, when he resumed private practice. Judge Park served as counsel to the University of Kentucky during the NCAA investigation of the men’s basketball program, and is credited with saving the program from the NCAA ‘death penalty.’

He helped to draft the Judicial Article to the Kentucky Constitution, and is a life member of the American Law Institute, among many other laurels in an illustrious legal career.

H. Foster Pettit helped give operational sinew to the new metro government in his lone term as mayor of the Urban County Government, and continued a long career of government service, law, and business, and as a resourceful advocate for the arts, the environment, and historic preservation.

Tragically, Mr. Pettit sustained a cut on the leg in a fishing trip to the Louisiana Delta, developed a fatal infection, and died Nov. 22, 2014. He was 84.

ABOUT THE AUTHOR

JAMES P. DADY is a litigator with Gerner & Kearns Co., LPA at its office in the historic James Taylor Mansion in Newport.

He is the editor of the Bench & Bar, a frequent contributor to the magazine, and chairman of the KBA’s Communications and Publications Committee.

ENDNOTES

1. The history related herein is drawn from the late Mr. Pettit’s book unless otherwise noted.
2. Prior to an amendment to the Kentucky Constitution in 1976, the Kentucky county judge was part petit-court judge, part chief county administrator, and part legislator as a member of fiscal court, or as a county commissioner as they are known in Jefferson County and metropolitan northern Kentucky. The Judicial Article relieved the county judge of judicial duty. The ‘judge’ portion of the modern title ‘judge-executive’ is an anachronism.
3. The scientific study of spiders is arachnology. A common cellar spider is a pholcus phalangioides. Some places they are encountered are in basements, under stones, under ledges, and in caves. They are associated in the public mind with living on ceilings and in corners of homes. The make their webs large, loose, and flat, but can make them into irregular shapes to fit into surrounding objects. Spiders are pale yellow-brown except for a large gray patch. Animaldiversity.org.
5. Judge Park’s biographical information is supplied by the UK College of Law’s website.
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In November 2016, Americans will head to the polls to cast their votes in a presidential election. More than 3,250,000 Kentuckians are currently registered to vote in the election, which will be marked in Kentucky by extraordinary nomination processes and several new laws affecting election administrators and voters.

AN ELECTION CYCLE FOR THE HISTORY BOOKS

In Kentucky, the 2016 presidential election cycle is already noteworthy, including a caucus for the Republican Party and a close preference primary leading to a recanvass of the votes on the Democratic side.

Rumors that Sen. Rand Paul would wage campaigns for both re-election to his U.S. Senate seat and the Republican nomination for President began well before Sen. Paul officially announced his candidacy. However, KRS 118.405 does not allow a candidate’s name to appear more than once on the same ballot. Recognizing the predicament in concurrently seeking two nominations, the Republican-controlled Kentucky Senate passed Senate Bill 205, which would have amended that statute to create an exception where one of the offices sought is President or Vice President. The bill did not pass the Democrat-controlled House of Representatives, and a lawsuit filed by a potential voter challenging the constitutionality of KRS 118.405 was dismissed for lack of standing.1

Despite the statutory obstacle, Sen. Paul did, however, win the Republican U.S. Senate primary on May 17. Hypothetically, had Sen. Paul received the Republican nominations for both president and U.S. Senator, he would have confronted the same ballot quandary in the November general election. Then, Sen. Paul would have likely faced the decision whether to continue with his Senate re-election and forgo the possibility of winning Kentucky’s presidential electoral votes, or to quit the Senate race. Quitting the Senate race would have created political ramifications for the Republican Party because in most circumstances Kentucky law does not allow parties to replace nominees who withdraw from a race.

The Democratic presidential preference primary held on May 17 also brought a great deal of interest to the Commonwealth because the unofficial vote margin on election night showed fewer than 2,000 votes separated Bernie Sanders and Hillary Clinton. Sanders requested a statewide recanvass of the totals – the second in two years.

The recanvass of the 2016 Democratic presidential primary did not change the 1,911-vote margin in favor of Hillary Clinton.

Likewise, a statewide recanvass of the 2015 Republican gubernatorial primary resulted in an unchanged 83-vote margin. Indeed, no statewide recanvass of any Kentucky election has changed its outcome.

In close elections, many observers ask when an automatic recount or recanvass is triggered. But Kentucky law does not provide for automatic reviews of vote counts, and there is a significant difference between recounts and recanvasses.

Generally, when Kentucky election margins are very close, the losing candidate requests a recanvass of the vote totals, which involves
an observed inspection and confirmation of the votes recorded on the electronic voting machines, largely because it is provided at no cost to the candidate. A candidate may request a recanvass by submitting a written request to the Secretary of State no later than 4 p.m. on the Tuesday following a primary or general election. By law, county boards of elections meet at 9 a.m. on the Thursday following the deadline to conduct the recanvass. ¹⁻²

A candidate may also consider a recount of the votes following a close election. That process is overseen by the circuit court and may include a physical recounting of ballots cast other than by use of voting machines, such as mail-in absentee ballots. In addition, Kentucky law requires a candidate to execute a bond to cover the costs of the process, so recounts are understandably rare.

In Kentucky, there is no record of a statewide recount ever occurring. The last major recount in Kentucky occurred in the 1994 Third Congressional District race. Republican Susan Stokes asked a circuit judge to conduct a recount of her race with Democrat Mike Ward. Stokes trailed Ward by 425 votes, and the recount changed the margin slightly in favor of Ward.

THE EVOLUTION OF ELECTIONS

Elections are the foundation of our democratic government, and they justifiably receive significant attention from legislative bodies and courts nationwide.

Nationally, several state legislatures have enacted laws perceived to limit the franchise, including requirements for photo identification and proof of citizenship and restrictions on early and absentee voting. Such enactments are almost uniformly challenged, and in July 2016 alone federal courts found laws in North Carolina, ³ Texas⁴ and Wisconsin⁵ to be unlawfully discriminatory, rejecting arguments that they are necessary to prevent voter fraud.

The U.S. Supreme Court has also considered similar laws in recent years, as well as cases regarding the Voting Rights Act of 1965, same-day voter registration, and redistricting. These high-profile battles over access to the ballot box highlight how important election administration is to fulfilling the promises of a democratic system of government, and how valuable each vote is.

In Kentucky more than 140 pieces of legislation related to elections have been introduced in the General Assembly since the 2012 presidential election. Through new laws that respond to an evolving electorate, Kentucky has continued to progress toward more accessible and reliable elections, while simultaneously preserving the integrity of elections and First Amendment rights.

Kentucky is making good use of available technology to ensure all eligible voters have a meaningful opportunity to participate in elections.

In 2015, the State Board of Elections exercised its authority to approve electronic voter registration in Kentucky by administrative regulation, making Kentucky the 31st state in the nation to offer that method of registration. The regulation satisfies the requirement under Kentucky law of a valid signature for the registration process by allowing registrants to provide their Driver’s License number and use the signature already on file with state government, or to sign digitally with a mouse or touch device.⁶

More than 35,000 Kentuckians have already used the online voter registration system, GoVoteKY.com, to register or update their registration. More than 2,000 of those users are 18-year-olds who will be able to vote for the first time this year.

Senate Bill 1, passed by the General Assembly in 2013, also takes advantage of technology. Now known as the Kentucky Military Heroes Voting Initiative, the law allows military and overseas voters to receive absentee ballots, register to vote, and update their voter registration online.⁷ The resulting online portal, accessible at GoVoteKY.com, was launched in 2014 and has cut two weeks from the time necessary for covered voters to complete the absentee voting process. More than 1,000 military and overseas voters have used the portal, ensuring their voices are heard from the battlefield back at the ballot box.

Kentucky also continues to analyze and improve its election procedures to ensure the process remains fair and free from corruption.

While there are few known instances of voter impersonation in Kentucky, the Commonwealth has a history of vote buying. Efforts to counteract vote buying activities have been at the forefront in recent years.

In the past, voters casting mail-in absentee ballots were particularly susceptible to vote buying and intimidation attempts because their names and address were publicly available. That enabled unscrupulous individuals to single them out, sometimes illegally pressuring or paying them to vote a certain way. Law enforcement officials were concerned the information may allow criminals to identify easy targets who would be out of town on Election Day.

To protect absentee voters, KRS 117.085 was amended in 2014 to provide that the names and addresses of absentee voters shall not be made public until after the close of business hours on the day of the election. A challenge to the statute in federal court, citing First Amendment grounds, was unsuccessful.⁸

KRS 117.235(3) also combats voter intimidation, protecting voters by prohibiting electioneering near polling places. The ban initially applied to an area within 500 feet of a polling place and was held unconstitutional by the Sixth Circuit in 2004.⁹ The next iteration decreased the distance to 300 feet, but the Sixth Circuit held in 2014 that the limitation still violated the First Amendment’s free speech guarantee.¹⁰

The State Board of Elections acted quickly in the wake of the 2014 decision, issued just weeks before a statewide general election, to promulgate an emergency administrative regulation that prohibits electioneering within 100 feet of a polling place, with an exception
for private property. In 2016 the General Assembly amended KRS 117.235 to be consistent with the regulation.

In the coming months, Kentucky will implement electronic poll books, which will assist law enforcement and election officials in maintaining election integrity. Kentucky should also consider options that have been successful in other jurisdictions, such as early voting, which was a key recommendation of the Presidential Commission on Election Administration and has been implemented in 37 other states.

ELECTION PREPARATIONS

County clerks and the State Board of Elections are preparing ballots and equipment for the general election and will soon begin training the more than 15,000 precinct election officials required to conduct statewide elections.

In addition to the presidential election, on November 8 Kentucky voters will vote for candidates for U.S. Representative, State Senator and Representative, and local offices.

September is National Voter Registration Month, and the Secretary of State’s office is engaged in outreach efforts designed to simultaneously highlight the Commonwealth’s new online voter registration portal and encourage Kentuckians to register ahead of the October 11 deadline. Visit the Commonwealth’s one-stop election portal, GoVoteKY.com, for all election-related information.

REGISTRATION DEADLINE: October 11, 2016
REGISTER TO VOTE: GoVoteKY.com
POLLS OPEN: 6 a.m. to 6 p.m.
ELECTION FRAUD HOTLINE: (800) 328-VOTE

ABOUT THE AUTHORS

ALISON LUNDERGAN GRIMES is Kentucky’s 76th Secretary of State and the youngest female Secretary of State in the nation. She was elected to the office in 2011 and re-elected last year. As Secretary of State, she has worked to break down barriers to the ballot box. She implemented online voter registration for every Kentuckian and, among other initiatives, has ushered in new laws that protect the voting rights of victims of domestic violence and absentee voters. Secretary Grimes has also helped modernize and streamline government services to make sure Kentucky’s doors are truly open for small businesses. Her efforts include a nationally-recognized one-stop business portal. Secretary Grimes received a Bachelor of Arts in political science from Rhodes College in Memphis and obtained her law degree, graduating with honors, from American University, Washington College of Law, in Washington, D.C. Prior to entering public service, she practiced business litigation with Stoll Keenon Ogden PLLC. She lives with her husband, Andrew, in Lexington.

LINDSAY HUGHES THURSTON is the assistant Secretary of State and the office’s chief operating officer. Previously, Thurston served as an Assistant United States Attorney in the Eastern District of Kentucky, where she prosecuted, among other things, child exploitation offenses under the United States Department of Justice’s initiative Project Safe Childhood.

Prior to joining the United States Attorney’s office, Thurston was an Assistant Fayette County Attorney. Thurston obtained her Bachelor of Arts in political science, graduating cum laude, from Stephens College in Columbia, Mo., and her Juris Doctor from the University of Kentucky College of Law.

LYNN SOWARDS ZELLEN is an associate with Moynahan, Irvin, & Moone, PSC, in Nicholasville. Her practice includes state and federal election law, employment litigation, business litigation, medical malpractice defense, and personal injury litigation. Prior to joining the firm, Zellen served as general counsel to the Secretary of State and State Board of Elections. She also previously worked for Stoll Keenon Ogden PLLC and served as a law clerk for the Honorable Jennifer B. Coffman and the Honorable Robert E. Wier. Zellen earned her juris doctor degree, summa cum laude, Order of the Coif, from the Washington University in Saint Louis School of Law in 2005 and a Bachelor of Arts in English from Centre College in 2002.

ENDNOTES

2. KRS 117.305; 31 KAR 4:070.
6. 31 KAR 3:040.
7. KRS Chapter 117A.
11. 31 KAR 4:180.

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When he was just 18 years of age, West Powell made a mistake that ruined his job prospects—he stole car radios from a junkyard and entered adulthood with a felony record. It was a youthful lapse that no doubt demanded accountability. However, the opportunities were so few after prison that Powell had to open his own computer repair business to find steady work. Now, 27 years later, the father of five still faces professional barriers. Powell’s latest obstacle involved a criminal background check that threatened to stall his studies to become a physical therapist. That’s because, until recently, Kentucky law did not allow the expungement of felony records.

Many have shared heartfelt stories with Kentucky lawmakers about sending out hundreds of job applications and not receiving a single call back from employers. Powell’s latest obstacle involved a criminal background check that threatened to stall his studies to become a physical therapist. That’s because, until recently, Kentucky law did not allow the expungement of felony records.

Governor Matt Bevin and the 2016 General Assembly worked in bipartisan fashion to enact House Bill 40, legislation that allows certain low-level felons to have their criminal records vacated once they have paid their debt to society. That means that, for the first time in Kentucky, many people convicted of crimes such as felony theft, criminal mischief or possession of a controlled substance will have an opportunity to clear their record and receive a second chance. Kentucky State Police estimate that these reforms could set the stage for more than 174,000 Class D felony convictions to be vacated. A Class D felony is the lowest level of felony crime recognized by Kentucky and authorizes a prison term of one to 5 years. House Bill 40 is codified in KRS 431.073, 431.074, 431.076, 431.078 and 431.079, and establishes eligibility requirements, fees and the process for filing an expungement.

The enactment of HB 40 recognized that most Class D felony offenders should not be subject to the lifetime social and economic roadblocks associated with a criminal record. HB 40 is one of several reforms helping Kentucky pivot to an evidence-based approach to criminal justice and public safety. Too often it’s those very barriers that propel offenders back into the criminal justice system, resulting in poor outcomes for taxpayers—who spent nearly half a billion on corrections last year—and for those families who rely on an ex-felon as a breadwinner. Equally important, this reform recognizes that once a person has returned to a law-abiding life, it is appropriate to restore their basic sense of dignity and alleviate the stigma of a criminal past.

MECHANICS OF THE BILL FOR FELONIES

Before the recent changes, Kentucky law allowed expungement of misdemeanors, violations and traffic infractions. HB 40 now permits expungement for certain Class D felonies specifically listed in the law, and for felons who have been pardoned by the governor. The law also allows expungement of felony charges that did not result in an indictment by a grand jury. The legislation makes clear, however, that expunging a conviction does not constitute a finding of legal error, nullify any facts from a trial or constitute a finding of innocence.

Here are the key provisions:

ELIGIBILITY – Offenders may seek to expunge a single felony or a series of felonies arising from a single incident once they have satisfied all terms of their sentence, including probation or parole. They must also have paid restitution, when it is a condition of probation or parole. In addition, the applicant must have completed a five-year waiting period without having been con-
The bill does not establish an independent process for victims to object, but the prosecutor is responsible for notifying victims of the crime. The victim could express objections to the prosecutor, send a letter to the court or attend a hearing to state objections in person. The court may expunge the conviction without a hearing, if prosecutors do not object.

**RESULT** – An order expunging a conviction triggers a broad response. The court and other agencies must remove the related criminal records so that the felony does not appear on state-performed background checks. The former felon is no longer required to disclose their past on a job or credit application, and the person may also register to vote again. The legislation does not, however, create a specific process to notify county clerks for the purpose of voter registration.

**APPLICATION AND FEES** – The bill stipulates a filing fee of $500. The first $50 of the fee is placed into a trust account for deputy circuit court clerks. A Certificate of Eligibility also costs $40.

In the past, supporters of the legislation proposed to limit expungements by citing exceptions. For instance, previous versions of the bill exempted sex crimes, offenses against children, domestic violence and a series of other offenses. Lawmakers sought a new approach in HB 40 by listing the offenses that are eligible, rather than the exceptions. According to the Kentucky Department of Public Advocacy, about 60-70 percent of all Class D felony charges are covered under the new legislation.

**CHANGES FOR MISDEMEANOR CONVICTIONS**

With regard to misdemeanors, HB 40 revamps some aspects of the law to ease requirements for expungement, but leaves much of the prior law intact. Here is a breakdown of how misdemeanor expungement works under the new law:

**ELIGIBILITY** – Eligible offenses include misdemeanors, violations or traffic infractions, though an offender cannot apply until five years after completion of their sentence or probation, whichever takes longest. An applicant may qualify for misdemeanor expungement if the offense was not a sex crime or offense against a child and is not subject to enhancement for a subsequent offense. Before HB 40, an applicant had to maintain a clean record for five years since the time of the conviction they were seeking to expunge, but that requirement has been eliminated. HB 40 only requires that a person not be convicted of a felony or misdemeanor for the five years prior to applying and is not subject to a pending felony or misdemeanor proceeding. It also allows people to expunge multiple misdemeanors, even those that did not arise from a single incident.

**PROCESS** – Like the process for felonies, an applicant must obtain a Certificate of Eligibility from the AOC and complete a Misdemeanor Conviction Expungement Form. The documents are to be filed together as a petition to the court within the judicial district where the conviction occurred. Once received, the court sets a
Tilley served five terms in the Kentucky House of Representatives and chaired the House Judiciary Committee from 2009 until his appointment.

During his legislative tenure, he co-chaired several joint bipartisan House/Senate task forces on criminal justice. He sponsored key pieces of legislation including the landmark criminal justice reform bill House Bill 463, which triggered a national model for change. The legislation is heralded for protecting public safety while holding defendants accountable, controlling corrections costs and increasing drug treatment. Secretary Tilley also led efforts to combat synthetic and prescription drugs. He has traveled internationally to speak on criminal justice reform and drug control policy and has received numerous awards and national recognition.

A graduate of the University of Kentucky and Chase College of Law, Secretary Tilley is a board member for the Council of State Government's Justice Center and co-chairs the National Conference of State Legislatures Law and Criminal Justice Committee. He brings a high level of passion and innovation to the Justice Cabinet's top post. His vision for the Cabinet is to protect citizens, restore victims and reform wrongdoers; all in a focused environment where everything is measured for accountability and performance.

**ENDNOTES**

5. KRS 532.060(d).
6. In 2011, the General Assembly adopted House Bill 463, legislation to curb runaway incarceration costs, right-size prison populations and demand a better return on taxpayer investments in public safety. The legislature also enacted Senate Bill 200 in 2014 to enhance assessment, oversight and diversion of juvenile offenders. Additional efforts include at least seven bills to address substance abuse, including measures to expand drug treatment and improve overdose intervention.
10. See KRS 439.563.
11. See KRS 431.073(1) for a comprehensive list. The law applies only to Class D felony violations but those include most crimes of theft, fraud, forgery and the making false statements, as well as burglary, unlawful possession or use of confidential information, identity theft, skimming credit card numbers, unlawful access to a computer, unlawful use of auto tags, joyriding, felons engaging in certain occupations, possession of controlled substances, cultivating marijuana, criminal mischief, receiving stolen property, sports bribery, gambling, bigamy, and non support. The statute also covers any offense for which the applicant has been granted a full pardon.
12. Molly Rose Green, “Years in the making, felony expungement law passes in Kentucky.”
14. See KRS 431.078.
Salmon P. Chase College of Law students will have more opportunities this year to refine the legal doctrines they learn in classes into the preparation they need for bar exams.

The Chase Foundations program, launched a year ago, consists of:

• Two online electives that focus on key doctrines in eight bar exam subjects.
• An in-person elective to reinforce the online reviews and to explore strategies for taking a bar exam.
• Introductions to post-graduation bar review study methods to smooth the transition from student to bar candidate.
• Two multiple-choice, bar exam-style tests every student must pass to be graduated.

Chase professors created the program to strengthen the connection between core courses and existing bar-preparation programs at Chase.

“It complements what we already do in a highly efficient way,” says Associate Dean for Professional Affairs Jennifer Kreder. The blending of existing and new includes making graduation contingent on passing the bar exam-type multiple-choice tests Chase used this past academic year to help students assess their readiness for a bar exam.

“Students have said that going through the nuanced multiple-choice questions improved their understanding of core legal doctrines,” Dean Kreder says.

HOW STUDENTS BENEFIT
A review course, whether during law school or after graduation, cannot replace the in-depth analysis of a law school class.

Chase Foundations, however, gives students paths to:

• Refresh concepts from first- or second-year classes.
• Focus thinking in such bar exam areas as torts, contracts, and property.
• Identify issues woven into bar exam questions.

Even though the program is aimed toward bar exam passage, it gives students in their final two years at Chase a framework with which to begin thinking of individual courses in the connected manner lawyers must understand. “We can admit students to Chase with strong potential to become great lawyers and train them both to reach that potential and to conquer the multiple-choice subtleties of a bar exam,” Dean Kreder says.

WHAT STUDENTS EXPERIENCE
Dean Kreder will review students’ work in the online courses, discuss difficult problems online, coordinate testing, and counsel students whose scores suggest they could struggle with a bar exam. Professor Barbara McFarland, director of Student Success Initiatives, will teach the in-person course that will expand on the online reviews and explore bar exam strategies.

The Chase faculty, led by Professor Chris Gulinello, designed the Foundations program after listening to graduates talk about their bar exam experiences.

“I spoke with former students who did not pass the bar on the first try,” Dean Kreder says. “It seemed that bar preparation and counseling before they left law school would have helped them greatly. We heard them and developed the Foundations program to give them what they need.”

WHAT FOLLOWS
Even after participating in Chase Foundations, students will need to take a bar review course. Foundations is a bridge to post-graduation study, not a replacement for it.

It can, however, help students realize that their hardest exam will be after graduation. In addition to helping them assess their grasp of substantive law, a portion of the bar exam-type tests will help them identify their attitudes toward a bar exam, so they will have plenty of time before graduation to find ways to allay any test anxieties.

For Chase students, Chase Foundations is another—and expanding—part of the journey from student to graduate to lawyer.
The latest installment of the Kentucky Legal Education Opportunity Program (KLEO) took place in July, and with it, 15 more first-year law students from historically underrepresented groups are more prepared for their legal educations.

Each of Kentucky’s three public law schools—the Louis D. Brandeis School of Law at the University of Louisville, the Salmon P. Chase College of Law at Northern Kentucky University and the University of Kentucky College of Law—select five incoming students for KLEO.

KLEO comprises a scholarship and summer institute designed to prepare students from low-income, minority and disadvantaged backgrounds for the rigors of law school. KLEO students are introduced to law curriculum, learn study skills and connect with former KLEO participants who serve as mentors.

“For 13 years, the KLEO Summer Institute and scholarship program has successfully increased the number of historically underrepresented and diverse students attending and graduating from Kentucky’s three public law schools,” said Allison Connelly, professor at the UK College of Law and director of the KLEO Summer Institute. “With an 88 percent graduation rate, the program has truly changed the face of justice in Kentucky.”

Mashayla Hays, a 2L at Brandeis Law who is a KLEO scholar and served as a mentor at this year’s summer institute, credits the program with preparing her for the intensity of the first few weeks of law school. “Being a KLEO scholar is awesome because law school is so different from undergrad, and I didn’t understand that when I first got there,” she said.

The KLEO program also helped make pursuing a legal education less intimidating, Hays said. Prospective law students hear a lot of negative things about going to law school, but the KLEO program made law school seem less intimidating, she said.

More than 170 students have participated in KLEO since its founding in 2002.

“As Heather Crabbe, assistant dean of students at Chase College of Law, pointed out, former KLEO scholars are now judges, corporate attorneys, partners in large to small firms, solo practitioners, prosecutors and public defenders, legal services attorneys and academics,” Connelly said.

Since 2009, KLEO has faced funding challenges related to the recession. Through the support of the state’s three public law schools, the Kentucky Bar Association, Kentucky Supreme Court Chief Justice John Minton and state and county bar foundations, the program continued. It was included in the Justice Cabinet’s 2016 budget, with the Justice Cabinet Secretary, John Tilley, being granted “maximum administrative flexibility.” Tilley elected to continue funding KLEO with only a small cut in funding, which was covered by the KBA’s Diversity Fund.

“We cannot thank Secretary Tilley enough for understanding the value of this program to diversifying the profession. This program works and should be expanded,” said Brandeis School of Law Dean Susan Duncan. “Brandeis School of Law takes great pride in our KLEO students. We lead the state in the percentage of KLEO students who graduate from law school. We know this program combined with the outstanding education they receive at Brandeis ensures they will not only graduate but be extremely successful in their future careers.”

Here, we’ll introduce you to a few of the KLEO scholars from Brandeis Law this year.

“KLEO to me is like a jump-start to success. They teach us the real-life experiences
of what law school is going to be like before ever stepping foot in a classroom. The professors are great and are one of a kind. Professor Connelly is probably one of the best not only teachers I know, but one of the greatest people I know. I can say she honestly cares about each and every one of us and our journeys to success. The things she and the other professors have taught us, such as briefing, studying tips, outlining and—most importantly—keys to success, will help each and every one of the KLEO scholars make it to the end.” - BRANDON RUDOLPH

“There are not enough words to express my gratitude for the KLEO program. Not only did it better equip me for the academic rigor of law school, it showed me that I am not alone on this journey. At the heart of the program is a community of lawyers that will be there for me during my times of struggle and times of joy. It is empowering to know that there are people rooting for me to succeed. I am so excited for what law school has to offer and I have KLEO to thank for that.” - SUE ENG LY

“I wish I could encapsulate my 11-day KLEO experience in a few paragraphs, but that would be doing it a disservice. So I’ll cut to the chase and encapsulate it in one word — awesome! We learned a lot, and most importantly, we learned how to use the IRAC (Issue, Rule, Analysis, Conclusion) formula to analyze cases and write memos and briefs. Think you can get this kind of shoptalk from a newbie 1L? That is the KLEO advantage, and I’m proud I have it, and some. The KLEO program is an awesome journey for those who are fortunate enough to be picked, and I am sure glad I was one of the 2016 class. I learned a lot about the practice of law, what to expect as I begin law school and how to succeed at it. KLEO has given us the tools to succeed in life, and I am grateful for that.” - JOHN BENOCHI

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Eighteen diverse high school students, representing all of Lexington’s public high schools and Sayre, came to the University of Kentucky College of Law on June 12-18 for the third annual Summer Law Institute (SLI) – a seven-day residential Law Camp for rising juniors and seniors interested in law and the legal profession.

Kenleigh Joseph, a student at Tates Creek High School, participated in the camp this year.

“This is one of the best experiences I’ve ever had,” said Joseph. “I also think it’s brought me clarity on what I want to go into after high school.”

Law Camp, co-hosted by the UK College of Law and the Fayette County Bar Association (FCBA), consists of four days of classes, one day of job shadowing, and a day of oral argument presentations. The classes, taught by UK Law Professors Allison Connelly, Mary Davis and Melissa Henke, covered the fundamentals of trial procedure, the judicial system, and criminal and civil law. In addition to seeing the academic side of preparing to be a lawyer, students had the opportunity to see lawyers at work, in their offices and in the courtroom. They toured the Fayette Circuit Courthouse, got a glimpse of several live court sessions, and shadowed attorneys to see what a day in the life of a lawyer is really like. In the evenings, students worked on daily assignments in Champions Court II, their assigned dormitory housing, to prepare for the individual oral arguments they presented on Saturday morning in the College of Law courtroom. A law professor and two local judges critiqued the arguments.

“Each year’s group has a different personality and this group was lively, engaged, smart and maybe a bit rambunctious. They fit together very well and bonded early,” said retired Judge Sheila Isaac, now Executive Director for the FCBA. “As the other two groups in previous years told us, they wanted to stay longer and have a second year camp next summer.”

Aside from the busy educational agenda created by Professor Connelly, who served as academic dean for Law Camp, there was also time to get a glimpse of student life at UK. The group that formed an instant bond played ultimate Frisbee, card games, ping-pong tournaments and even had dessert at local favorites Sav’s Grill and Insomnia Cookies.

The idea to host a law camp is credited to Judge Isaac. When she first began as director of the FCBA, she met with the director of the Louisville Bar Association who informed her about their annual law camp funded by the Louisville Bar Foundation – the only program they have allowed to be funded every year. She loved the idea, decided to write for a grant, and with the help of UK College of Law faculty and staff, the rest fell perfectly into place.

“Law Camp challenges these students academically and hones their speaking and debate skills,” said Judge Isaac. “Within a week, a shy, nervous, soft-spoken student will turn into a zealous advocate for their imaginary clients.”

“The mock trial was fun,” said Keymari Johnson, rising junior at Henry Clay High School. “We all were assigned cases and had to defend our argument in front of Prof. Connelly. It was like we were in a real situation.”

Judge Isaac looks forward to next year’s Law Camp, a week that makes young people better citizens by educating them on the fundamentals of the law and trial, broadening their understanding and awareness of the bar, and promoting a positive image of the law profession.
THANK YOU TO THE FOLLOWING WHO HELPED MAKE THIS YEAR’S LAW CAMP POSSIBLE:

**LAW CAMP EXECUTIVE DIRECTOR**
Judge Sheila Isaac

**LAW CAMP FACULTY**
- Professor Allison Connelly
- Professor Mary Davis
- Professor Melissa Henke

**LAW STUDENT MENTORS**
- Rachel Hepburn
- Skylar Jewell

**LAW CAMP JUDGES AND LAWYERS**
- Judge Joe Bouvier
- Matt Boyd
- Taylor Brown
- Judge Kim Bunnell
- Julie Butcher
- Traci Caneer
- Connor Egan
- Lucy Ferguson
- John Hayne
- Robert Houlihan, Jr.
- Kelly Kilgore
- LaToi Mayo
- Austin Mehr
- Larry Roberts
- Gregg Thornton

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The injunction against the passive voice is far more to be feared than even the dread rule against perpetuities. It is observed in the reading more diligently than in the writing. It is a very popular sin because it is so easily found in others, regardless of one's own state of grace. Let the poor verb be shifted into the wrong gear, and the red pen is loosed in righteous indignation. The keen-eyed sleuth is then entitled to luxuriate in the moral laxity of his prey. The taboo is invoked more strictly than strict scrutiny. It is strict liability, unless, of course, the temptation can be self-justified when our own hands are on the keyboard.

It is a commonplace that a sentence in passive voice can be put in the shade by its active partner. As epiphanies go, “The light was seen by me” pales by comparison to “I saw the light.” Yet there are occasions, notes Professor Good, where the passive voice is, in fact, preferred. Take, for example, my good grandmother’s customary question about age: “When did you get your birth?” and “I was born in 1954.” Question and answer are in flawless active voice, but yet most would prefer the passive “When were you born?” and “I was born in 1954,” despite the fact that the active and heroic sine qua non is entirely omitted from any credit. Why is the passive here preferred?

One reason for the fluidity between acceptable and unacceptable uses of the passive voice is the fluidity of the function of words born as verbs. Consider Ensign Nellie Forbush’s justification for her racism in South Pacific: “I can’t help it… This is something that’s born in me.” She clearly views “born” as a predicate adjective, like “intrinsically.” She thus disclaims any verb process implying responsibility: “I can’t help it.” Her static adjective helps equate her prejudice to a predestinate and immutable order where islands are innately beneath her benevolent dignity.

Lt. Cable will have none of this. He has lost and learned from his own racism. He rejects “born” as a static adjective. For Cable, to be “born” is a verb, a process devoid of racism: “It’s not born in you. It happens after you’re born.” We know this because he then parallels “born” with an unambiguous verb in the passive voice: “You’ve got to be taught….” Racists are made, not born, and can take the responsibility to “help it.”

In the great lost and found of verbs and verbalis, it can be a matter of perspective to pin down whether a participle following “to be” forms a predicate adjective or passive verb. With participles quantuming between alternate states in the same conversation, it is no wonder that unacceptable, acceptable, and yea, preferred uses of the passive voice may seem random. They need not be.

Two keys are context and focus. When, in days of yore, I told the barkeep, “I was born in 1954,” my dear mother’s strength in bearing me was not the focus, alas, despite the chosen verb. Rather, I was asserting my entitlement to my socializer of choice. As a Bona Fide Baby Boomer, “I” came first, because, after all, it was all about me. The passive voice allowed me to assume my proper place in the center of attention. The fact that my mother bore me was ungratefully forgotten. Now I use the same sentence to assert my entitlement to health care, and more importantly, insurance coverage. The context still requires that “I” am the focus and come first in the sentence, but I have these days renewed my gratitude.

The active “I saw the light” is preferred for the same reason. It is my epiphany, my perception, my acumen, my putting two and two together which are front and center, and so “I” remain in the spotlight by using the active voice. Beginning with “The light” makes “me” an afterthought. On the other hand, if the light happens to be the Chelyabinsk meteor of 2013, the passive voice puts the flash foremost: “The light was seen by thousands in Russia.”

So given a context, the passive should be chosen to give primacy to the object of the action. Naturally, emphasis on the actor requires the active voice.

A third key is the precision of meaning achievable in the passive voice. Clevelanders know that “The Cavaliers won the NBA Championship over the Warriors.” For the rest of us who hung on every basket this season as the Warriors set an improbable record with its unprecedented star, the focus is on the team that lost: “Curry and the Warriors lost the NBA Championship to the Cavaliers.” Yet to be precise, the story of the finals is that the Cavaliers rose from the dead, down three games to one, to wrest away a near-certain title from Golden State: “Curry and the Warriors were beaten by the Cavaliers in the NBA Championship.”

Only the passive voice places the first focus on the nigh infallible and permits the precise verb for their demise. The invincible were beaten in an almost literal sense. The active voice “lost” does not come close.

Here the passive voice not only gives primacy to the headliners, but also permits the choice of the optimal verb.

A fourth key is whether meaning can be made more vivid or real by placing the payoff at the end of the clause. Consider the following horrific crime: “Her own family bludgeoned her to death.” The sentence is exemplary in its orthodoxy. It is accurate, concise, and in the active voice. But in a criminal brief, it shortchanges the reader of meaning and the victim of her story. There is nothing concise about a bludgeoning. The passive voice permits more: “She was bludgeoned by her uncle, her brothers, her father, and even her mother, until shame was purged and honor sated in blood.”
The passive voice puts the barbarity of the murder first: “She was bludgeoned . . .” With the initial horror established, the longer sentence reflects the victim’s extended ordeal. The active voice would abbreviate her pain. The active “Her uncle, her brothers, her father, and even her mother bludgeoned her” suspends the brutality until the family roll is called. It might have been a picnic until we arrive at the verb. The passive voice allows the panic to unfold as the victim perceived it, culminating in the despair of even her mother’s complicity.

The passive voice in the first clause thus brings forward the shock of the violence, sustains a sense of its duration, and builds to the anguish of Medean betrayal. The passive voice in the subordinate clauses then fixes the reader upon the irony of the murderers’ motives: “. . . until shame was purged and honor sated in blood.” Shame and honor take precedence over blood in the syntax as in the savagery. Note that the passive here is more concise than the active voice would be: “. . . until they purged her shame and sated their honor in her blood.”

The passive shame and honor clauses illustrate the fifth key of relevance and its cousins: where the actor is already known from context, as the family members above; or unknown (“His wallet was stolen.”); or too general to specify (“His guilt was widely suspected.”); or too scandalous (“Mistakes were made.”); trivial or inconsequential (“He was given his just deserts.”); or non-existent (“The fraud can be found in the figures.”).

Finally, Professor Good adds that the passive voice can deliver us from arch non-sexist constructions: “Assignments will be received at the circulation desk” just trashes “One may submit his/her assignment at the circulation desk.”

Hamlet says that “there is nothing good or bad, but thinking makes it so.” Thinking through the context, focus, meaning, impact, and relevance of the agent, the action, and the object will help us find the appropriate voice for the message and the ordering of ideas best suited to seize, hold, and seal the reader’s mind for our clients’ needs. Unthinking reflex against the passive voice surrenders an indispensable tool. Why an advocate would forfeit the precision, richness, and narrative strength the right voice at the right time can provide is lost on me.

ABOUT THE AUTHOR

DONALD KAZEE is a Boyd County native and is a graduate of Morehead State University, the University of Kentucky, and Georgetown University Law Center. He has taught Basic Legal Skills at Northern Kentucky University Salmon P. Chase College of Law since 1989 and has principal interests in criminal law, particularly perjury and obstruction.

ENDNOTES

3. Hamlet, act 2, sc. 2.
Some of Mr. Gullett’s advice to young lawyers includes the following gems:

- When you first get a case, expend a fair amount of due diligence researching the legal nuances specific to the facts of that claim (e.g., statute of limitations, administrative remedies, elements of the action, potential defenses, etc.).
- Implement rigorous office procedures. Malpractice claims based on statute of limitations, or other deadlines such as expert witness identification, are 99.9 percent avoidable. In Mr. Gullett’s own practice, he required that every time a staff member or attorney handled a document that referenced a date (e.g., hearing, deposition, meeting, deadline, etc.) they confirmed it was on the firm calendar.
- You are going to be a lot happier if you are not moving from crisis to crisis. To avoid doing so, exercise extreme discipline, do what you least want to do first, and maintain a strict routine.
- Accept that you do not have control over the facts, personalities, people, or jury. And even when some or all of those factors may be working in your favor, your results are to an extent still random. Reflecting on a particular vote fraud case he tried, Mr. Gullett can state from experience that you can believe in a case, do the very best you can, and go broke in the process. But still lose the trial and your friend goes to jail. And you can come back from an experience like that—still alive, still a lawyer, and in fact, a much better lawyer.
- You will be a better lawyer if you understand that there is no reason why you can’t advocate for your client, work hard, and yet still be friendly and professional with your adversaries.
- He learned from a doctor in Elkhorn City that weekends don’t really help all that much with stress and recharging—your blood vessels don’t start to relax until after two days. After a scare with depression and anxiety early in his career, Mr. Gullett began the healthy habit of taking nine day trips, two or three times per year, and doubts that he would have survived without those breaks.

Not only is LMICK the only professional liability insurance company created by Kentucky lawyers for Kentucky lawyers, it is also an invaluable sponsor of the KBA Young Lawyers Division (“YLD”). The ongoing support of LMICK enables the YLD to present two CLEs at the Kentucky Law Updates this fall, and free web based CLEs through its member website, www.kbayld.org. At this year’s bar convention, the YLD was able to host 10 CLEs, as well as a reception in honor of its 50th Anniversary, and its annual luncheon with over 75 guests in attendance. On Feb. 24, 2017, in Louisville and March 14, 2017, in Lexington, the YLD will be sponsoring day-long CLE seminars in coordination with the local Legal Aid Societies—not only providing practical skills for new lawyers, but also encouraging pro bono practice.

The YLD Disaster Legal Services program provides immediate temporary legal assistance to disaster survivors at no charge, and Voices Against Violence trains volunteer lawyers in Kentucky to assist domestic violence survivors with obtaining Domestic Violence Orders. In 2017, the YLD will be launching a new community outreach program, along with the Kentucky Association of Food Banks and Attorney General Beshear. Law firms, legal offices, and law schools in Kentucky will compete to raise over 600,000 pounds of food for Kentucky’s food banks. The winning law firm or organization will be presented with the Attorney General’s Cup at the 2017 KBA Convention in Owensboro.

The YLD, with the support of LMICK, continues to encourage diversity in the legal profession. The Why Choose Law/Pipeline program that will be held on April 6, 2017, in Lexington will provide high school and undergraduate students with an introduction to the legal profession. An introduction they may not have had otherwise. The YLD also awards the Nathaniel R. Harper Diversity Award annually, along with the Outstanding Young Lawyer, Young Lawyer Service to Community, and Service to Young Lawyers Awards in recognition of the many contributions made by Kentucky lawyers to improve the legal profession.

As part of education outreach, YLD volunteers present the U@18 and BullyProof programs at high schools and middle schools across the Commonwealth. In the law schools, YLD presents the Road Less Traveled, a panel of lawyers who have taken alternative career paths. There are $2,000 in bar study scholarships awarded each year, and networking events to provide law students with the opportunity to interact with attorneys. There are also annual networking events planned by the YLD District Representatives and a reception hosted as part of the New Lawyer Training Program.

All of this, and so much more, would not be possible but for the support of YLD’s amazing sponsors—LMICK and National Insurance Agency. For their guidance and support, as well as that of Mr. Gullett, and so many other experienced members of the bar like him, who are willing to give their time to mentoring new lawyers—the YLD is ever grateful.
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DEAR FRIEND.

With profound sorrow, fond memories and deepest sympathy for his family, Stoll Keenon Ogden remembers the remarkable life of the Honorable Joseph M. Scott, Jr.
The Board of Governors met on Tuesday, May 10, 2016. Officers and Bar Governors in attendance were, President D. Farnsley; President-Elect M. Sullivan; Vice President W. Garmer; Immediate Past President W. Johnson, Young Lawyers Division Chair T. Watkins and Incoming YLD Chair R. Schafer. Bar Governors 1st District – M. Pitman, F. Schrock; 2nd District – T. Kerrick, J. Meyer; 3rd District – M. Dalton, H. Mann; 4th District – A. Cabbage; 5th District – M. Barfield, E. O’Brien; 6th District – G. Sergent; and 7th District – M. McGuire, J. Vincent. Bar Governors B. Simpson and S. Smith were absent.

In Executive Session, the Board considered seven (7) default disciplinary cases, involving five attorneys. Judy Campbell of Frankfort, Brenda Hart of Louisville, Dottye Moore of Elizabethtown and Dr. Leon Mooneyhan of Shelbyville non-lawyer members serving on the Board pursuant to SCR 3.375, participated in the deliberations.

In Regular Session, the Board of Governors conducted the following business:

- President-Elect R. Michael Sullivan advised that the July 21-23 Summer Board of Governors, CLE Commission and Young Lawyers Division Executive Committee meetings would be held in Owensboro at the Hampton Inn & Suites and the Owensboro Convention Center.
- Young Lawyers Division (YLD) Chair J. Tanner Watkins reported that the Division received complimentary comments regarding the March Bench & Bar in which every feature article was either authored or co-authored by a young lawyer on issues young lawyers are facing such as mentoring and student debt, as well as several articles on young lawyer achievements. Watkins reported that the YLD membership numbers are the highest ever with over 2,000 members which is an increase of approximately 500. He stated this is due in part of the fact that every newly admitted KBA member now automatically becomes a YLD member. Watkins also reported on the following activities of the Division: Pipeline/Why Choose Law Program, the Legal Feeding Frenzy and the two 2016 KLU programs. Watkins reported that this year YLD will be celebrating its 50th Anniversary and will have a major involvement in the Annual Convention sponsoring Featured Speaker Ari Shapiro, CLE programming, reception in conjunction with the Bench & Bar Reception and the annual luncheon where the following awards will be presented: Young Lawyer Service to the Community Award – Elizabeth Weinke; Service to Young Lawyers Award – Margaret E. Keane; and Outstanding Young Lawyer of the Year Award – Carl N. Frazier.
- KYLAP Director Yvette Hourigan presented a five (5) year plan to continue to reduce the risk of lawyer suicides.
- Director of Administration Melissa Blackwell reviewed the 2016 Annual Convention calendar of events and reported that 1,800 convention pre-registrations had been received.
- Approved the reappointment of Charles E. “Buzz” English, Jr., of Bowling Green, and the appointment of Carl N. Frazier of Lexington (YLD Representative), as the Kentucky delegates to the ABA House of Delegates for a two year term ending at the conclusion of the 2017 ABA Annual Meeting.
- Approved disbanding the Task Force on Closed and Abandoned Practices and the Task Force on Communications.
- Approved the list of the 2016 Honorary Members, pursuant to SCR 3.030(3) and Bylaw Section 2, who reached the age of 75 or have been admitted to practice law for 50 years.
- Approved the recommendation of the KBA Audit Committee to maintain the audit firm Rudler PSC in Northern Kentucky for its audit and tax preparation process.
- Executive Director John Meyers gave an update on the IT project.
- Meyers reported that the Supreme Court made the following appointments to the CLE Commission: Frank Hampton Moore, III, of Bowling Green, Graham C. Trimble of Corbin and J. Tanner Watkins of Louisville. William Mitchell Hall, Jr., of Ashland was appointed as CLE Commission Chair.
- Meyers reported that the Supreme Court made the following appointments to the IOLTA Board Trustees: John H. Lackey, Jr. of Hopkinsville, Stephen D. Gray of Henderson and John G. Wright of Warsaw.

TO KBA MEMBERS
Do you have a matter to discuss with the KBA’s Board of Governors? Board meetings are scheduled on:
November 18-19, 2016 • January 20-21, 2017
To schedule a time on the Board’s agenda at one of these meetings, please contact John Meyers or Melissa Blackwell at (502) 564-3795.

SAVE THE DATE
2017 KBA Diversity and Inclusion Summit
APRIL 6-7, 2017
Hilton Lexington/Downtown
Lexington, KY

More Information Coming Soon
Supreme Court of Kentucky

IN RE: ORDER AMENDING RULES OF CRIMINAL PROCEDURE (RCr)
2016-06

The following rules’ amendments shall become effective January 1, 2017.

A. RULES OF CRIMINAL PROCEDURE (RCr)

I. RCr 4.08 Confidentiality of pre-trial services agency records

New section (i) of RCr 4.08 shall read:

(i) the risk assessment questions, level and score may be electronically accessed by the prosecutor and counsel for the defendant.

II. RCr 4.38 Mandatory review after twenty-four hours

RCr 4.38 shall read:

If a defendant continues to be detained 24 hours without arraignment from the time of the initial imposition of conditions of release because of inability to meet such conditions, the judge that imposed the conditions must review them on defendant’s written application or may do so on his/her own motion. If the judge declines to modify them, the judge shall record in writing the reasons for that decision. It shall be the duty of the pretrial release officer to inform the judge that set the initial conditions of release of those defendants in custody who are not released from jail after 24 hours and who have not been arraigned.

III. RCr 4.43 Appellate review of bail; habeas corpus

Subsections (a), (b), (c), (d) and (e) and new subsections (f), (g) and (h) of section (1) to RCr 4.43 shall read:

(1) When a circuit court has granted or denied a motion for a review of a bail bond under RCr 4.38 or 4.40, or has changed a condition of release pursuant to RCr 4.42, a defendant adversely affected may appeal that decision to the Court of Appeals pursuant to the following procedures:

(a) The notice of appeal from the order of the trial court shall be filed within ten (10) days after the date of entry, subject to Civil Rule 12.06, and shall otherwise be in the manner fixed by Civil Rule 12.04.

(b) Upon the filing of the notice of appeal the clerk of the circuit court shall prepare and certify a copy of such portion of the record or proceedings as relates to the question of bail and is needed for the purpose of deciding the issue on appeal, including, but not limited to, the order of the trial court, the motion and any responses thereto, and any video recording of the hearing on the motion being appealed. The abbreviated record shall be filed with the clerk of the appellate court within fourteen (14) days after filing of the notice of appeal.

(c) The appellant shall within ten (10) days after the filing of the record file a brief with the appellate court. The brief shall state clearly the procedural history of the case, the factual history of the dispute, and the grounds on which movant’s claim for relief is based and otherwise comply with the briefing requirements of Civil Rule 76.12. Such brief shall not exceed five (5) double-spaced typewritten pages. The brief and record appendix shall be served on both the local Commonwealth’s attorney and the Attorney General.

(d) No brief shall be required of the appellee, but the appellee may file a brief within ten (10) days after the date the appellant’s brief is filed. Such brief shall not exceed five
(5) double-spaced typewritten pages and shall otherwise comply with the requirements of Civil Rule 76.12. No other briefs shall be filed unless requested by the appellate court.

(e) The appeal shall stand submitted for final disposition ten (10) days after the date on which the appeal was perfected by the appellant or upon the filing of the appellee's brief, whichever occurs first. Oral argument will not be held unless ordered by the Court sua sponte or on the grant of a motion of a party.

(f) Neither the filing of the notice of appeal nor the pendency of the appeal shall stay further proceedings in the prosecution.

(g) A final disposition by the Court of Appeals on the appeal shall not be subject to rehearing or modification under Civil Rule 76.32 or reconsideration under Civil Rule 76.38(2).

(h) Any party adversely affected by the final disposition of the appeal by the Court of Appeals may move the Supreme Court for discretionary review within thirty (30) days from the date the decision of the Court of Appeals was entered. Such a motion will be entertained only for extraordinary cause shown in the motion. A response to the motion for discretionary review may be filed within thirty (30) days after the motion is filed. Ten (10) copies of the motion and response, if any, shall be filed with the Clerk of the Supreme Court.

IV. RCr 7.02 Subpoenas

Section (3) of RCr 7.02 shall read:

(3) A subpoena may also command the person to whom it is directed to produce the books, papers, documents, data and data compilations or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents, data and data compilations or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents, data and data compilations or objects or portions thereof to be inspected by the parties and their attorneys.

V. RCr 7.24 Discovery and inspection

Section (2), subsection (b) to section (3), sections (4), (5), (6), (7), (8) and (9) and new sections (10) and (11) of RCr 7.24 shall read:

(2) On motion of a defendant the court may order the attorney for the Commonwealth to permit the defendant to inspect and copy or photograph books, papers, documents, data and data compilations or tangible objects, or copies or portions thereof, that are in the possession, custody or control of the Commonwealth, upon a showing that the items sought may be material to the preparation of the defense and that the request is reasonable. This provision authorizes pretrial discovery and inspection of official police reports, but not of memoranda, or other documents made by police officers and agents of the Commonwealth in connection with the investigation or prosecution of the case, or of statements made to them by witnesses or by prospective witnesses (other than the defendant).

(3)(b) If the defendant requests disclosure under Rule 7.24(2), upon compliance with such request by the Commonwealth, and upon motion of the Commonwealth, the court may order that the defendant permit the Commonwealth to inspect, copy, or photograph books, papers, documents, data and data compilations or tangible objects which the defendant intends to introduce into evidence and which are in the defendant's possession, custody, or control.

(4) It is not a defense against untimely disclosure of evidence under this rule that the party failing to provide timely disclosure only recently formed the intent to introduce such evidence unless it can be demonstrated, by clear and convincing evidence, that: (1) it could not, in a timely fashion, have reasonably foreseen a need to introduce the evidence and (2) that such untimely disclosure will not unfairly prejudice the opposing party.

(5) Except for the Commonwealth's obligation to provide exculpatory evidence to the defendant, none of the provisions of this rule regarding disclosure of evidence relating to expert testimony shall be deemed to have been violated unless and until the party offering the evidence attempts to introduce it at trial and the opposing party timely objects.

(6) If the case has been set for trial, a request for relief under this rule shall be made a reasonable time in advance of the trial date, and the granting of a continuance by reason of such request shall lie within the sound discretion of the court.

(7) An order granting relief under this rule shall specify the time, place and manner of making the discovery and inspection permitted and may prescribe such terms and conditions as are just.

(8) On a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate. On motion the court may permit the Commonwealth to make such showing, in whole or part, in the form of a
written statement to be inspected by the court privately; and if the court thereupon grants relief following such private inspection the entire text of the Commonwealth's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal by the defendant.

(9) One (1) motion shall exhaust the relief available to the movant under this rule, except that a subsequent motion may be sustained on a showing of just cause.

(10) If subsequent to compliance with an order issued pursuant to this rule, and prior to or during trial, a party discovers additional material previously requested which is subject to discovery or inspection under the rule, that party shall promptly notify the other party or the other party’s attorney, or the court, of the existence thereof.

(11) If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or an order issued pursuant thereto, the court may direct such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as may be just under the circumstances.

VI. RCr 13.15 Biological and Chemical Evidence

New rule RCr 13.15 shall read:

(1) The custodial agency of evidence involved in a death penalty criminal prosecution shall preserve all biological and chemical evidence for as long as the defendant remains incarcerated under a death sentence.

(2) Upon request, all biological and chemical evidence shall be made available to defendants sentenced to death and said defendants may seek appropriate relief notwithstanding any other provision of the law.

(3) “Biological and chemical evidence” includes the content of sexual assault examination kits, and any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable biological material that is collected as part of a criminal investigation which may reasonably be used to incriminate or exculpate any person for a criminal offense which may carry a penalty of death.

All sitting. All concur.
ENTERED: September ____, 2016.

CHIEF JUSTICE
The Kentucky Bar Association (KBA) strives to add additional features and content to the website as we hear from our members. Now being rolled out are new features giving you the options to add language(s) and areas of practice to your online KBA member profile! The information you provide will be searchable in the Lawyer Locator.

FOR MORE INFORMATION, PLEASE SEE BELOW.

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Are you fluent in any other languages besides English? Would you like to provide legal services to people who utilize that particular language and have limited or no English proficiency? If so, add your spoken language(s) and/or sign language credentials to your public member profile. We do not independently verify your language skills; however, when you add a language to your profile, you are affirming that you personally possess the necessary language skills in the selected language to work and interact with speakers of that specific language group.

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**STAND OUT ON YOUR KBA MEMBER PROFILE!**

These new features will allow you to create a more personalized profile that is more than just your firm name and contact information. In addition to the Lawyer Locator, information you provide on your profile may be located by using search engines like Google, Yahoo!, Bing, etc. Updating your profile is as simple as logging in to the website, selecting Edit Bio under Manage Profile, and then submitting your changes. Don’t miss out on this opportunity—update your profile today!

**LAWYER LOCATOR NEW SEARCH FIELDS**

In an effort to help address the public need to locate a particular Kentucky licensed attorney, language(s) and area(s) of practice search fields have been added to the Lawyer Locator on the website. The Lawyer Locator is an online search tool that is frequently used to search the membership database for Kentucky licensed attorneys as it has been accessed over 185,000 times since the launch of the new KBA website in April 2015.

**IF YOU HAVE ANY QUESTIONS OR COMMENTS, PLEASE CONTACT THE KBA AT (502) 564-3795.**
COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

GREGORY T. POPOVICH, DISTRICT COURT JUDGE
17TH JUDICIAL DISTRICT

PUBLIC REPRIMAND

Gregory T. Popovich served as District Court Judge for Kentucky’s 17th Judicial District located in Campbell County from 1993 until his retirement on March 16, 2016. Although Judge Popovich has returned, the Commission retains jurisdiction pursuant to SCR 4.025. Judge Popovich has waived formal proceedings and has agreed to the disposition made in this Order.

As part of a preliminary investigation, the Commission reviewed video recordings of Judge Popovich presiding over District Court on several occasion in 2013, 2014, and 2015. The recordings revealed Judge Popovich making inappropriate statements while in open court. Additionally, the recordings showed that Judge Popovich failed to take adequate steps to apprise criminal defendants of their rights in open court.

The Commission concludes that by the conduct described above, that Judge Popovich violated SCR 4.020 (1)(b)(i) and engaged in misconduct in office. The Commission further concludes that Judge Popovich violated SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

Canon 1 which requires judges to maintain high standards of conduct and uphold the integrity and independence of the Judiciary.

Canon 2A which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 3B(4) which requires judges to be dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity.

Based on the foregoing conduct, examples of which are attached here to as Exhibit 1, Judge Popovich is hereby publicly reprimanded.

DATE: 7/7/16

/s/ R. KENT WESTBERRY, ACTING CHAIR

Chairman Stephen D. Wolnitzek and Judge Karen Thomas recused themselves from any consideration of this matter.

Agreed to:

Date: 7/6/16

/s/ Hon. Gregory T. Popovich

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:

OLU A. STEVENS, CIRCUIT COURT JUDGE
30TH JUDICIAL CIRCUIT

AGREED ORDER OF SUSPENSION

Olu A. Stevens (“Judge Stevens”) is a Circuit Court Judge for Kentucky’s 30th Judicial Circuit, consisting of Jefferson County. Prior to the commencement of the final hearing, the parties reached an agreement to resolve the matter. Judge Stevens has waived formal proceedings and Judge Stevens, the Judicial Conduct Commission (the “Commission”) and the Commission’s Counsel have agreed to the entry of this Order.

The Commission received Complaints and other information, conducted preliminary and subsequent investigations, and filed a Notice of Formal Proceedings and Charges (the “Original Notice”), an Amended Notice of Formal Proceedings and Charges (the “First Amended Notice”) and a Second Amended Notice of Formal Proceedings and Charges (the “Second Amended Notice”) (the Original Notice, First Amended Notice and Second Amended Notice referred to collectively as the “Notices”) against Judge Stevens alleging he violated the Canons of the Kentucky Code of Judicial Conduct. The Notices asserted eight (8) charges against Judge Stevens. Judge Stevens timely filed Responses to each of the Notices.

Judge Stevens, by counsel, and the Commission’s Counsel, reached agreement on a resolution of this matter, as described below. The Commission’s Counsel recommended that the Commission accept the agreement reached with Judge Stevens, and the Commission, by a vote of 6-0 approved the agreement, resulting in this Agreed Order of Suspension:

1. Judge Stevens agrees that he will not retaliate against any witness, complainant or person involved in these proceedings regarding their statements, actions or other conduct prior to the date of this Agreed Order of Suspension, and further agrees that if he does commit any such acts of retaliation as to such prior statements, acts or conduct, it will constitute a breach of this Agreed Order of Suspension.

2. Judge Stevens’ public statement regarding this matter is attached as Exhibit A to this Agreed Order and incorporated by reference.

3. Judge Stevens agrees that any statements made by him or by others under his direction disavowing the contents of the public statement or admissions in this Agreed Order shall constitute a breach of this Agreed Order which shall result in a reinstitution of the charges and may subject Judge Stevens to additional discipline up to and including removal from office.
4. Judge Steven agreed to, and did, make an allocution on the record and in open court on August 8, 2016, as follows:

a. As to Count I of the Notices, Judge Stevens admits that he made the statements contained in subsections (a) through (c) and that these statements constitute a violation of the Canons 1, 2A and 3B(5) of the Kentucky Code of Judicial Conduct.

b. As to Count II of the Notices, Judge Stevens admits that he made the statement contained in subsections (a) and (b), and that these statements constitute a violation of Canons 1, 2A and 4A(2) of the Kentucky Code of Judicial Conduct.

c. As to Count III of the Notices, Judge Stevens admits that he made the statements contained in subsections (a) through (m) and that these statements constitute a violation of Canons 1, 2A, 3B(4), 3B(5), 4A(1), and 4A(2) of the Kentucky Code of Judicial Conduct.

d. As to Count IV of the Notices, Judge Stevens admits that he made the statements contained in subsections (a) through (g) and that these statements constitute a violation of Canons 1, 2A, 3B(4), 3B(5), 4A(1), and 4A(2) of the Kentucky Code of Judicial Conduct.

e. As to Count V of the Notices, Judge Stevens admits that he made the statements contained therein and that these statements constitute a violation of Canons 1, 2A, 3B(4), 3B(5), 3B(9), 4A(1), and 4A(2) of the Kentucky Code of Judicial Conduct.

f. As to Count VI of the Notices, Judge Stevens admits that he made the statements contained therein and that these statements constitute a violation of Canons 1, 2A, 3B(9), 4A(1), and 4A(2) of the Kentucky Code of Judicial Conduct.

g. As to Count VII of the Notices, the Commission agrees that this charge is DISMISSED.

h. As to Count VIII of the Notices, Judge Stevens admits that he made the statement contained therein and that this statement constitutes a violation of Canons 1, 2A, and 3B(9) of the Kentucky Code of Judicial Conduct.

Therefore, in light of the foregoing, Judge Stevens is hereby suspended from his duties as Jefferson Circuit Court Judge, without pay, for a period of ninety (90) days, beginning August 8, 2016 and ending October 30, 2016. In entering this Order with the agreement of Judge Stevens, the Commission has duly considered that Judge Stevens fully cooperated in the Commission’s investigation and procedures and that he had no prior infractions.

Judge Janet L. Stumbo, Judge Eddy Coleman, Judge Karen Thomas, Mr. Joseph D. Adams, Mr. Michael A. Noftsger, and Mr. Stephen D. Wolnitzek, sitting. Judge David P. Bowles recused from any consideration of this matter.

Date: 8/8/16

/s/ Stephen D. Wolnitzek, Chair

Agreed to:

/s/ Kimberly L. Bunton, Counsel for Judge Stevens

/s/ Hon. Olu A. Stevens, Judge

/s/ Jeffrey C. Mando, Counsel for the Commission
On August 8, 2016, the parties in this action entered into an Agreed Order of Suspension whereby Judge Olu A. Stevens would serve an unpaid suspension for a period of ninety (90) days. However, the Agreed Order contained a clerical error that set the terms of the suspension for August 8, 2016 to October 30, 2016, which consists of only 83 days.

SCR 4.160 states that Kentucky Rules of Civil Procedure shall apply to the Commission to the extent they are not inconsistent with Supreme Court Rules. CR 60.01 allows the Commission to correct any clerical mistakes in judgments, orders or other parts of the record. In order to correct the clerical error contained in the Agreed Order, the Commission hereby ORDERS that the August 8, 2016 Agreed Order of Suspension is hereby corrected to accurately reflect terms agreed upon by the parties at the August 8, 2016 hearing. Judge Stevens’ 90-day suspension shall begin on August 8, 2016 and conclude on November 6, 2016. All other terms and provisions of the August 8, 2016 Agreed Order of Suspension shall remain in effect.

Dated: August 11, 2016

/s/
STEVEN D. WOLNITZEK, CHAIRMAN
KENTUCKY JUDICIAL CONDUCT COMMISSION

Judge David P. Bowles recused himself from any consideration of this matter.

CERTIFICATION

I hereby certify that copy hereof was served on Judge Olu A. Stevens, Jefferson Circuit Court Judge, by mailing same to his attorneys, Kimberly L. Bunton, 1238 E. Broadway, 2nd Floor, Louisville, KY 40204; and Jon Wyndal Gordon, 20 South Charles St, Suite 400, Baltimore, MD 21201; and the attorneys for the Judicial Conduct Commission, Jeffrey C. Mando and Louis D. Kelly, 40 W. Pike Street, Covington, KY 41012, this 11th day of August, 2016.

/s/
JIMMY SHAFFER,
EXECUTIVE SECRETARY

For more than 140 years, Wood Herron & Evans has been a regional and national leader in providing innovative solutions for clients seeking to protect what is theirs. Our clients are leaders in science and industry worldwide. Our attorneys possess the requisite skills to protect all facets of the intellectual property assets of our clients, including patents, trademarks, trade secrets, copyrights, advertising & privacy.

2700 Carew Tower | 441 Vine Street | Cincinnati, Ohio 45202
Phone: 513-241-2324 | Fax: 513-241-6234

THIS IS AN ADVERTISEMENT. KENTUCKY LAW DOES NOT CERTIFY SPECIALIZATION OF LEGAL SERVICES.
<table>
<thead>
<tr>
<th>Judicial Circuit</th>
<th>Candidate</th>
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<tbody>
<tr>
<td>1st (Ballard, Carlisle, Fulton, Hickman)</td>
<td>indigible</td>
</tr>
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</table>
|2nd (McCracken)| Craig W. Housman, Paducah
|              | Van Franklin Sims, Paducah |
|3rd (Christian)| Tarrant J. James, Hopkinsville
|              | Jack Nance Lackey, J., Hopkinsville |
|4th (Hopkins)| John Keith Cartwright, Madisonville
|              | Charles G. Franklin, II, Madisonville |
|5th (Crittenden, Union, Webster)| indigible |
|6th (Daviess)| John W. Stevenson, Owensboro
|              | R. Michael Sullivan, Owensboro |
|7th (Logan, Todd)| Fred Garland Greene, Russellville
|              | Alicia Carol Johnson, Russellville |
|8th (Warren)| Shawn R. Alcott, Bowling Green
|              | Michael A. Owlesley, Bowling Green |
|9th (Hardin)| Robert Keith Bond, Elizabethtown
|              | Jerry M. Coleman, Elizabethtown |
|10th (Hart, LaRue, Nelson)| Matthew E. Hite, Bardstown
|              | Patrick A. Ross, Horse Cave |
|11th (Green, Marion, Taylor, Washington)| Danny P. Butler, Greensburg
|              | Theodore H. Lavit, Lebanon |
|12th (Henry, Oldham, Trimble)| James L. Theiss, LaGrange
|              | David L. Vish, Prospect |
|13th (Garrard, Jessamine)| James S. Sanders, Lancaster
|              | David William Thomas, Nicholasville |
|14th (Bourbon, Scott, Woodford)| Joseph Morrison Hoffman, Versailles
|              | Richard M. Rawdon, J.R., Georgetown |
|15th (Carroll, Grant, Owen)| Edward M. Bourne, J.R., Owenton
|              | Steven N. Howe, Dry Ridge |
|16th (Kentucky)| David E. Davidson, Covington
|              | James Moberly West, Fort Mitchell |
|17th (Campbell)| J. David Bender, Fort Thomas
|              | Timothy E. Schneider, Fort Thomas
|              | Michael Thomas Sutton, Florence |
|18th (Harrison, Nicholas, Pendleton, Robertson)| Sam W. Arnold, III, Cynthiana
|              | Charles Donald Wells, Falmouth |
|19th (Bracken, Fleming, Mason)| Dale L. Horner, J.R. Maysville
|              | Marvin W. Suit, Flemingsburg
|              | Donald L. Wood, Maysville |
|20th (Greenup, Lewis)| John R. McGinnis, Greenup
|              | Lloyd E. Spear, Vanceburg |
| 21st (Bath, Menifee, Montgomery, Rowan) | Michael R. Campbell, Morehead  
Truman L. Dehner, Morehead  
M. Benjamin Shields, Mount Sterling |
| 22nd (Fayette) | Kevin G. Henry, Lexington  
Martha A. Rosen, Lexington |
| 23rd (Estill, Lee, Owsley) | Thomas K. Hall, III, Beattyville  
Wade L. Rasner, Booneville |
| 24th (Johnson, Lawrence, Martin) | John C. Kirk, Paintsville  
Roger Lee Massey, Paintsville |
| 25th (Clark, Madison) | James T. Gilbert, Richmond  
John H. Romp, Jr., Winchester |
| 26th (Harlan) | Johnnie L. Turner, Harlan  
Kellie D. Wilson-Lee, Harlan |
| 27th (Knox, Laurel) | Robert R. Baker, Stanford  
Brian C. House, London |
| 28th (Lincoln, Pulaski, Rockcastle) | Laura H. Harris, Columbia  
David M. McAnelly, Liberty |
| 29th (Adair, Casey) | Martin E. Johnstone, Prospect  
John R. McCall, Louisville  
Aaron J. Silletto, Prospect  
Diana L. Skaggs, Louisville |
| 30th (Jefferson) | Clyde Combs, Jr., Martin  
Jimmy C. Webb, Prestonsburg |
| 31st (Floyd) | Michael J. Curtis, Ashland  
James H. Moore, III, Ashland |
| 32nd (Boyd) | Randall Scott May, Hazard  
Frank C. Medaris, Jr., Hazard  
Justin Wade Noble, Hazard |
| 33rd (Perry) | Brien G. Freeman, Corbin  
David S. Hoskins, Corbin |
| 34th (McCready, Whitley) | Rhonda J. Blackburn, Pikeville  
Donald Howard Combs, Pikeville |
| 35th (Pike) | Randy A. Campbell, Hindman  
Graham T. Martin, Salyersville |
| 36th (Knot, Magoffin) | Robert W. Miller, Grayson  
William H. Wilhoit, Grayson |
| 37th (Carter, Elliott, Morgan) | Deborah Lee Bolt, Hartford  
Abram V. Conway, Hartford |
| 38th (Butler, Edmonson, Hancock, Ohio) | Patrick E. O'Neill, Jackson  
Gary C. Rose, Campton |
| 39th (Breathitt, Powell, Wolfe) | Catherine Brown Capps, Burkesville  
Nicholas A. Carter, Tompkinsville |
| 40th (Clinton, Cumberland, Monroe) | Phillip Lewis, Hyden  
Yancey L. White, Manchester |
| 41st (Clay, Jackson, Leslie) | George E. Long, II, Benton  
John Patton Rall, Murray |
| 42nd (Calloway, Marshall) | T. Richard Alexander II, Glasgow  
Thomas W. Davis, Glasgow |
| 43rd (Barren, Metcalfe) | Blake S. Bowling, Middlesboro  
Jennifer F. Nagle, Middlesboro |
| 44th (Bell) | Donna Dant, Calhoun  
Cary Edward Davis, Greenville |
<table>
<thead>
<tr>
<th>Judicial District</th>
<th>Candidate</th>
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<tr>
<td>1st (Fulton, Hickman)</td>
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<tr>
<td>10th (Hart, Larue)</td>
<td>PATRICK A. ROSS, Horse Cave  DAMON R. TALLEY, Hodgenville</td>
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<td>13th (Garrard, Jessamine, Lincoln)</td>
<td>JAMES S. SANDERS, Lancaster  DAVID WILLIAM THOMAS, Nicholasville</td>
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<tr>
<td>28th (Pulaski, Rockcastle)</td>
<td>MELINDA G. DALTON, Somerset  MARK D. KNIGHT, Somerset</td>
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<td>40th (Clinton, Russell, Wayne)</td>
<td>ROBERT L. BERTRAM, Jamestown  JOEL RANDOLPH SMITH, Jamestown  LANCE W. TURNER, Monticello</td>
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<td>42nd (Calloway)</td>
<td>DENNIS J. COURNEY, Murray  MICHAEL M. PITMAN, Murray</td>
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<td>57th (Nelson)</td>
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<td>59th (Ballard, Carlisle)</td>
<td>MARK S. MEDLIN, La Center  DANIEL C. THOMAS, Wickliffe</td>
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<td>60th (Cumberland, Monroe)</td>
<td>CATHERINE BROWN CAPP, Burkesville  NICHOLAS A. CARTER, Tompkinsville</td>
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<tr>
<th>Judicial District</th>
<th>Candidate</th>
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<tr>
<td>46th (Breckenridge, Grayson, Meade)</td>
<td>THOMAS C. BRITI, Hardinsburg  ALEC G. STONE, Brandenburg  DAVID B. VICKERY, Leitchfield</td>
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<td>47th (Letcher)</td>
<td>MATTHEW THOMAS BUTLER, Whitesburg  PEYTON F. REYNOLDS, Whitesburg</td>
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<td>48th (Franklin)</td>
<td>JOHN B. BAUGHMAN, Frankfort  ROBERT W. KELLERMAN, Frankfort</td>
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<td>49th (Allen, Simpson)</td>
<td>TIMOTHY JOHN CROCKER, Franklin  JAMES S. SECREST, Jr., Scottsville</td>
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<td>50th (Boyle, Mercer)</td>
<td>DEEDRA BENTHAL, Danville  CHARLES DAVID PATRICK, Harrodsburg</td>
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<td>51st (Henderson)</td>
<td>SANDRA D. FREEBURGER, Henderson  J. CHRISTOPHER HOPGOOD, Henderson</td>
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<td>52nd (Graves)</td>
<td>CHARLES S. FOSTER, Mayfield  SAM BOYD NEELY, Jr., Mayfield</td>
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<td>53rd (Anderson, Shelby, Spencer)</td>
<td>TIFFANY J. BOWMAN, Simpsonville  THOMAS M. JONES, Lawrenceburg  GREGG Y. NEAL, Shelbyville</td>
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<tr>
<td>54th (Boone, Gallatin)</td>
<td>JEFFREY R. AYLOR, Florence  HARRY DAVID WALLACE, Fort Wright</td>
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<td>55th (Bullitt)</td>
<td>MARK E. EDISON, Shepherdsville  JOSEPH J. WATLAND, Shepherdsville</td>
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<tr>
<td>56th (Caldwell, Livingstone, Lyon, Trigg)</td>
<td>STUART CURTIS PEEK, Smithland  MARC A. WELLS, Princeton</td>
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<td>57th (Russell, Wayne)</td>
<td>ROBERT L. BERTRAM, Jamestown  DONALD H. BYROM, Jamestown  JOEL RANDOLPH SMITH, Jamestown  LANCE W. TURNER, Monticello</td>
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</table>
The Kentucky Clients' Security Fund (CSF) was established by the Supreme Court of Kentucky (Rule 3.820) to be administered by the Kentucky Bar Association. It is funded by the Bar dues of the lawyers of Kentucky to reimburse clients for losses caused by their attorney’s dishonest conduct, defined as the wrongful taking of clients’ money or other property or failure or inability to return unearned fees. The amount of $7.00 per lawyer, $6.00 per member of the judiciary, is allocated from member dues by the Kentucky Supreme Court for this Fund. The CSF does not consider losses resulting from negligence, nor does it consider consequential damages. There are caps on recovery.

In the fiscal years 2005-2006 through 2015-2016 the CSF has paid $1,794,341.29 to victims. The CSF provides a last-resort avenue for client victims who are unable to get reimbursement for their losses from the responsible lawyer, or from insurance or other sources. There is no charge to the client for this process. The Rule prohibits lawyers from being compensated for assistance in a claim.

Claims are reviewed by a Board of Trustees appointed by the Board of Governors of the Kentucky Bar Association. These five (5) Trustees consist of three lawyers and two lay members who perform their duties as a public service and receive no compensation.

CSF Payments in Fiscal Year 2015-2016

<table>
<thead>
<tr>
<th>ATTORNEYS WHOSE CLIENTS SUFFERED LOSSES</th>
<th>TOTAL PAID</th>
<th>NUMBER OF CLIENTS REIMBURSED</th>
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<td>Curtis, Brian</td>
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<td>Francis, Cabell</td>
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<tr>
<td>Scoville, Warren</td>
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Further information regarding the CSF can be found on the Kentucky Bar Association website, www.kybar.org under the Discipline menu.
Congratulations to Ashlea Hellmann, the winning author of the 2016 Kentucky Bar Association Student Writing Competition. Her article, “The Right to a Pauper’s Bail: Should Bail Be Set According to a Defendant’s Ability to Pay,” was selected as the first place entry by members of the student writing competition judging panel. Hellmann is a 2016 graduate of the University of Louisville Louis D. Brandeis School of Law. She also holds Bachelors’ degrees in communication and justice administration, and a Master’s degree in criminal justice from the University of Louisville. Hellmann spent her law school career clerking for the Honorable McKay Chauvin and the Ricketts Law Offices, as well as participating on two mock trial teams and volunteering with the Central High Partnership Program. Upon passage of the July 2016 Bar Exam, Hellmann will eagerly begin her legal career with the Jefferson County/Louisville Metro Public Defender’s Office.

To view Hellmann’s article visit www.kybar.org/page/hottopics.
KYLAP HOSTS LAWYERS IN RECOVERY MEETINGS IN NORTHERN KENTUCKY AND LEXINGTON

The Kentucky Lawyers Assistance Program offers weekly open recovery meetings for lawyers, law students and judges in Northern Kentucky and Lexington. The Northern Kentucky Lawyers in Recovery meeting is held at 5:00 p.m., on Tuesdays at 510 Washington Avenue, Newport, KY 41071. Please bring your own coffee. The Lexington Kentucky Lawyers in Recovery meeting is held at 7:30 a.m. on Wednesdays at the Alano Club downtown, 370 East Second Street, Lexington, KY 40508.

All meetings are open to law students, lawyers and judges who are already involved or who are interested in a 12-step program of recovery, including but not limited to Alcoholics Anonymous, Narcotics Anonymous, Overeaters Anonymous and Al-Anon. Come meet other attorneys and network. All meetings and contacts are confidential. SCR 3.990. For additional information, please visit www.kylap.org, call (502) 564-3795, ext. 266, or email abeitz@kylap.org.

KENTUCKY LAWYER ASSISTANCE PROGRAM FOUNDATION, INC., FORGIVABLE LOAN PROGRAM

The KYLAP Foundation is a 501 (c)(3) non-profit Kentucky Corporation created and approved pursuant to Supreme Court Rule 3.910(8) to promote the mission of the Kentucky Lawyer Assistance Program (KYLAP). KYLAP’s mission is to assist Kentucky's lawyers, law students and judges who suffer from impairments including drug, alcohol, or other addictions, depression, and other mental health disorders.

The Foundation helps Kentucky’s lawyers, law students and judges seek medical and professional treatment for impairment issues when no other financial resources for treatment exist. The Foundation is premised on the same principle as the Kentucky Lawyer Assistance Program—Lawyers Helping Lawyers.

Your tax-deductible contribution provides direct help for suffering lawyers through the extension of (forgivable) loans for treatment (paid directly to the medical providers). All money given by lawyers goes directly to the treatment of lawyers. For more information on the Kentucky Lawyer Assistance Program Foundation, Inc., please contact KYLAP Director Yvette Hourigan at (502) 564-3795 or at yhourigan@kylap.org.
Great Place to Start

Resource Center for New Attorneys in Kentucky

Find a Mentor and Take Charge of Your Future!

The KBA Find a Mentor program is designed to connect experienced attorneys with new attorneys who are seeking advice and guidance in balancing the personal and professional demands of the practice of law.

How it works:
Qualified mentors sign up and volunteer to participate in the GPS mentor program. New attorneys looking for assistance (mentees) may locate a mentor through the GPS website by the mentor’s location or area of practice. The mentee can view detailed information about potential mentors and then initiate first contact. This self-initiated contact may involve a single issue, or entail a more lasting, formal mentor relationship. The limits of the relationship are determined by the preferences of the participants.

This service is available to new attorneys admitted to practice in Kentucky for five years or less. For more detailed information visit www.kbagps.org and see what the program has to offer.
I am honored to serve as the 2016 Chair of the Kentucky CLE Commission. This will be my sixth and final year on the Commission. During the past five years, I have learned that the Commission’s responsibilities are not limited to monitoring CLE compliance and sending the courtesy reminders. I want to take some time to share the services that our director, her staff, and the Commission provide to Kentucky attorneys. In addition to monitoring compliance, the Commission plans and presents continuing legal education programs, most notably the Kentucky Law Update (KLU). These programs provide multiple opportunities for KBA members to receive quality CLE throughout the year and across the state (and, in the case of the KLU, at no cost to KBA members). In addition to offering its programs, the Commission approves CLE programs offered by other sponsors and organizations. This past year, the Commission reviewed over 10,200 applications and programs for CLE accreditation. The Commission also reviews and recommends changes to the Supreme Court rules that govern continuing legal education in Kentucky (SCR 3.600 – 3.695). Among many other rule changes occurring during my tenure, the Commission proposed reorganization of the CLE rules, including a change in the annual CLE requirement from 12.5 to 12 hours to make Kentucky consistent with surrounding states. Our recommendations were adopted and approved by the Supreme Court and are reflected in the current version of the Supreme Court rules.

The appointed Commission members meet every other month, typically at the KBA office in Frankfort. The real work is done between the meetings, by our Director, Mary Beth Cutter, and her staff. Ms. Cutter and her staff track CLE compliance of 18,457 KBA members. Coleen Kilgore, the attorney records coordinator, maintains up-to-date attorney CLE records and enters over 41,500 CLE transactions per educational year. Ms. Cutter and Regulatory Coordinator Leona Deleon send friendly reminders to those who have not met their annual requirement, including extra courtesy reminders that are not required by the rules. She and her staff assist members who have fallen behind to become compliant. Clifford Timberlake, accreditation coordinator, reviews all applications for CLE and determines if they meet the Supreme Court Rules and Standards. Lori Alvey serves as the programming attorney and KBA section liaison for the KBA’s substantive law sections.

In addition to these regular activities, at any given time, Ms. Cutter and her staff are planning the next big CLE program offered by the Commission, whether it be the KLU (offered at multiple locations around the state in late summer and early fall), the New Lawyer Program (offered two times a year), or the CLE programs for the KBA Annual Convention. Staff members Dianna Moore, Sonja Blackburn, and Caroline Carter are heavily involved in these programs, which require months, if not years, of organizing, planning topics and coordinating presenters. Because of the hard work of this strong team, our bi-monthly Commission meetings are efficient and easy.

I look forward to the upcoming year. The Commission is in the process of implementing a new software program that will allow online submission of applications for accreditation, payment of fees and fines online, as well as online submissions of certificates of attendance. This system, which should be implemented during the fall and winter of 2016, is intended to assist the CLE staff in establishing a more efficient record-keeping system, along with achieving vastly improved convenience and efficiencies for our members.

We were sorry to say goodbye to our three departing members, but I look forward to getting to know our new members, Hampton Moore (Bowling Green), Graham Trimble (Corbin), and Tanner Watkins (Louisville). They will contribute to our mission of promoting quality continuing legal education this year. We always welcome input from our KBA members. If you have suggestions for ways that continuing legal education can improve, please contact your District representative, Mary Beth Cutter, or me. We will continue to look for ways to make it easier for our KBA members to obtain quality continuing legal education and to promote legal competence in the Kentucky Bar.

ABOUT THE AUTHOR

W. MITCHELL HALL, JR., a 1991 graduate of the University of Kentucky College of Law. Hall practices with the Ashland, Ky., firm of VanAntwerp Attorneys, LLP. Hall’s practice is devoted to commercial matters and litigation, including medical malpractice, labor and employment law, insurance defense, and school law. He was appointed as the 7th Supreme Court District representative to the Continuing Legal Education Commission in 2011. He can be reached at whall@vanattys.com.
In the July 2016 edition of the *Bench & Bar*, the firm of former CLE Commission member, Matt Cook, was misidentified. Cook’s firm is Cole & Moore, P.S.C. It was founded in 1974 and is located in Bowling Green, Ky. The firm is a full-service law firm whose attorneys strive for favorable resolutions to complex legal issues throughout the Commonwealth of Kentucky. With expertise in a diverse range of practice areas, the firm has earned a solid reputation for solving legal problems across a wide spectrum of legal issues.
The Kentucky Bar Foundation is proud to welcome thirteen new Fellows from across the Commonwealth. The Fellows Program recognizes those members of the Kentucky Bar who have shown support for the KBF’s mission through their success in the practice of law and their generosity in contributing to the KBF.

WILLIAM H. ADAMS II of Lexington serves as legal counsel to the Kentucky Tourism, Arts, and Heritage Cabinet. A graduate of Centre College and the University of Kentucky College of Law, he was admitted to the Kentucky Bar in 2009 and is also a member of the South Carolina Bar.

JAMES PAUL BRADFORD practices law in Paducah with Denton Law Firm, PLLC. A graduate of the University of Kentucky and University of Louisville Brandeis School of Law, he was admitted to the Kentucky Bar in 2014. Mr. Bradford is a Life Fellow.

MIRANDA D. CLICK practices law in Martin with East Kentucky Law Group, P.S.C. A graduate of Alice Lloyd College and the University of Kentucky College of Law, she was admitted to the Kentucky Bar in 2008. Ms. Click currently serves as the Seventh District Representative on the Executive Committee of the Kentucky Bar Association Young Lawyers Division.

JUDGE J. FOSTER COTTHOFF of Hopkinsville serves as a District Judge for Christian County. A graduate of Centre College and the University of Kentucky College of Law, he was admitted to the Kentucky Bar in 1999. Judge Cotthoff is a Life Fellow.

LARRY J. CRIGLER of Union serves as the Interim Assistant Director and Litigation Manager for the Kentucky Association of Counties. A graduate of the University of Kentucky and Northern Kentucky University Chase College of Law, he was admitted to the Kentucky Bar in 1971 and is also a member of the Ohio Bar. Mr. Crigler is a Life Fellow.

SANDRA D. FREEBURGER practices law in Henderson with the law firm of Deitz, Shields & Freeburger, L.L.P. A graduate of the University of Evansville and the University of Kentucky College of Law, she was admitted to the Kentucky Bar in 1976. She is a past president of the Kentucky Justice Association and is also an author and lecturer for the University of Kentucky College of Law Continuing Education Department. Ms. Freeburger is a Life Fellow.

JULIE ROBERTS GILLUM practices law in Somerset with the law firm of Gillum & Gillum. A graduate of Western Kentucky University and the University of Kentucky College of Law, she was admitted to the Kentucky Bar in 2001. Ms. Gillum is a Life Fellow.

MICHAEL SHANE HALL practices law in Pikeville. A graduate of Georgetown College and the University of Dayton School of Law, he was admitted to the Kentucky Bar in 1999. Mr. Hall is a Life Fellow.

JUDGE ROBERT W. HEATON of Bardstown passed away in July 2012 at the age of 65. A graduate of Saint Louis University and the University of Kentucky College of Law, he was admitted to the Kentucky Bar in 1973. He returned to Bardstown in 1974 and operated a private practice, primarily as a defense attorney, with several partners through the years. He served as Bardstown City Attorney for 19 years, and he was elected Nelson County District Court Judge in November 1998, where he ran unopposed and continued to serve until his death. Judge Heaton was enrolled as a Life Fellow posthumously by Bardstown attorney and Bar Foundation Board Member Doug Hubbard.

JOHN DAVID MEYER practices law in Owensboro with the law firm of Meyer & Meyer, LLP. A graduate of Indiana University and University of Louisville Brandeis School of Law, he was admitted to the Kentucky Bar in 1998. Mr. Meyer currently serves as a member of the Kentucky Bar Association Board of Governors.
JUDGE LARRY D. RAILES of Bardstown passed away in August 2012 at the age of 73. A graduate of the University of Kentucky and the University of Kentucky College of Law, he was admitted to the Kentucky Bar in 1962. Originally from Larue County, he opened his first law practice in 1962 in Hodgenville, where he practiced 20 years and served as Larue County Attorney for two terms beginning in 1969. He was appointed by Gov. John Y. Brown to finish out the unexpired term of Judge Charles Richardson as the 10th Judicial Circuit Judge in 1983. He was elected to Circuit Judge in 1983 and ran unopposed until his retirement in 2002, after which he took Senior Judge Status until 2008. In 2008, he joined the Bardstown law firm of Fulton, Hubbard & Hubbard where he practiced law until his death. Judge Raikes was enrolled as a Life Fellow posthumously by Bardstown attorney and Bar Foundation Board Member Doug Hubbard.

RYAN M. STRATTON practices law in Pikeville with the law firm of Baird & Baird, P.S.C. A graduate of Pikeville College and the Appalachian School of Law, he was admitted to the Kentucky Bar in 2013. He currently serves as secretary of the Pike County Bar Association. Mr. Stratton is a Life Fellow.

BLAKE E. WRIGHT recently opened his own solo practice in Versailles. A graduate of Transylvania University and Northern Kentucky University Chase College of Law, he was admitted to the Kentucky Bar in 2008. He previously served as an Assistant County Attorney in Mason County and was an associate attorney at Fox, Wood, Wood & Estill. Mr. Wright is a Life Fellow.

THANKS TO THE SUPPORT AND GENEROSITY of these and hundreds of other KBF Fellows, the Kentucky Bar Foundation is able to award significant annual grants to support law-related nonprofit programs and projects throughout the Commonwealth. If you are interested in learning more about becoming a KBF Fellow, please visit www.kybarfoundation.org/donate/fellow or contact the Kentucky Bar Foundation at (800) 874-6582.
At its heart, the Kentucky Bar Foundation is about attorneys and judges helping others. To celebrate the longstanding tradition of service among members of the Kentucky Bar, the Kentucky Bar Foundation is proud to spotlight these attorneys “doing good” in their communities! For more information about the Foundation and its charitable work on behalf of Kentucky’s legal community, visit www.kybarfoundation.org.

**NKY ATTORNEY HELPS ORIENT KIDS TO THE OUTDOORS**

Attorney **STEPHANIE ROSS** has been getting kids outdoors and active long before Pokémon GO became all the rage. Her volunteer work with her local orienteering club, Orienteering Cincinnati, includes providing instruction to school groups, scout troops, and others interested in learning how to use a map and compass to explore the world. “I especially appreciate the opportunity to expose kids in more urban school districts to a wilderness experience they might not otherwise know,” Stephanie commented. “Knowing how to use a map and compass is really empowering and a great way to make a walk in the woods more exciting.” Stephanie practices in the Fort Mitchell office of Reminger Co., LPA.

**FAYETTE COUNTY PRESENTS LAW CAMP FOR HIGH SCHOOL STUDENTS**

On June 12-18, 2016, the **FAYETTE COUNTY BAR ASSOCIATION**, the **UNIVERSITY OF KENTUCKY COLLEGE OF LAW**, and 17 attorney volunteers hosted the third annual Summer Law Institute, a seven-day residential Law Camp for 18 rising high school juniors and seniors. Participating students took part in four days of classes taught by law professors, attorneys, and judges, plus a day of job shadowing and a day of presenting their own oral arguments. In the evenings, students enjoyed social events and worked on assignments in their UK dorm rooms. Photos are courtesy of the Fayette County Bar Association.

**USE THE HASHTAG #KYATTYSDOINGGOOD WHEN POSTING PICTURES OF YOUR COMMUNITY SERVICE PROJECTS ON SOCIAL MEDIA**

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**Attorney John Hayne**, right, of the Fayette County Attorney’s Office and law campers Jesse Dunn, Amanda Gosper, and Dylan Tellman.

**Attorney Connor Egan**, second to left, of Stoll Keenon Ogden PLLC and law campers Anthony Graham, Victor Allison, and Ellie Webb.

**Attorneys Mary Kovalesky, Jay Inman, and LaToi Mayo** of Littler Mendelson P.C, along with law campers Keymari Johnson and Osamah Masadeh.
Attorneys FRANKLIN JELSMA, BOB HEATH, CORKY CORYELL, BYRON LEET, TAD MYRE, and MIKE FINE from the Louisville office of Wyatt, Tarrant & Combs, LLP, plus numerous staff, family, and friends, joined together to support their friend and colleague, attorney RICK ALSIP, in the ALS Association’s “Walk to Defeat ALS” at Papa John’s Corporate Campus. Rick was the top fundraiser for the ALS Association Kentucky Chapter, with over $20,000 raised by Team Alsip.

LOUISVILLE ATTORNEYS WALKING TO DEFEAT ALS

More than a dozen members of the MCCracken County Bar Association joined hundreds of community volunteers to construct the Rotary Club Playground during the week of June 20-26, 2016. Through 900 four-hour shifts, volunteers built the playground as part of the new Paducah Health Park project to provide a space for many hours of healthy exercise and entertainment for children in their community. It features a rope wall, rock wall, monkey bars, and a variety of castles, swings, and slides. Pictured at left helping to assemble a fence is attorney JIM SIGLER of Whitlow, Roberts, Houston & Straub, PLLC. Pictured at right is Senior U.S. District Judge THOMAS RUSSELL after a day of pouring concrete. Photos courtesy of Phyllis Russell Photography.

PADUCAH ATTORNEYS HELP BUILD PLAYGROUND

KY ATTORNEYS DOING GOOD

Do you and your firm or legal department enjoy volunteering in your community? Do you have a great action shot from a recent community service project? For a chance to be featured in “Kentucky Attorneys Doing Good” in a future issue of the Bench & Bar, please email pictures of you “in action” to KBF Executive Director Amelia Adams at aadams@kybar.org, along with the names of those pictured and a description of your project.

*Your submission of a photograph constitutes your permission for it to be used by the Kentucky Bar Foundation, as well as the Kentucky Bar Association, in their programs, publications, enewsletter, websites, social media pages, and any and all other print and online materials. By submitting, you acknowledge that you hold the rights to the photo for publication in all KBF or KBA materials.
As a final tribute, the *Bench & Bar* publishes brief memorials recognizing KBA members in good standing as space permits and at the discretion of the editors. Please submit either written information or a copy of an obituary that has been published in a newspaper. Submissions may be edited for space. **Memorials should be sent to sroberts@kybar.org.**

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<tr>
<th>NAME</th>
<th>CITY</th>
<th>STATE</th>
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<tr>
<td>Murray J. Greenwald</td>
<td>Louisville</td>
<td>KY</td>
<td>June 10, 2016</td>
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<td>Edward Davis Hays</td>
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<td>KY</td>
<td>April 9, 2016</td>
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<td>Terrance Joseph Janes</td>
<td>Hopkinsville</td>
<td>KY</td>
<td>July 5, 2016</td>
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<td>Carol W. Johnson</td>
<td>Hopkinsville</td>
<td>KY</td>
<td>July 21, 2016</td>
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<td>Crystal Dawn Love</td>
<td>Versailles</td>
<td>KY</td>
<td>June 5, 2016</td>
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<td>William P. Mulloy</td>
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<td>July 5, 2016</td>
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<td>Robert B. Overstreet</td>
<td>Versailles</td>
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<td>Joseph M. Scott</td>
<td>Lexington</td>
<td>KY</td>
<td>July 5, 2016</td>
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<td>Irwin Gerald Waterman</td>
<td>Louisville</td>
<td>KY</td>
<td>June 19, 2016</td>
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<td>Harold Gwyn Wren</td>
<td>Prospect</td>
<td>KY</td>
<td>June 13, 2016</td>
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**Irwin Gerald Waterman,** 93, died peacefully on Father’s Day, June 19, 2016. He was born Oct. 25, 1922, in Greenwood, Miss. He held a Bachelor’s in English and a law degree from University of Mississippi and a Master of Laws in Taxation from New York University School of Law. He served in the US Army for 30 months during WWII, including nine months with the 164th Infantry Regiment in the Philippines and nine months with units in Japan during the Occupation after the war, leading one of the units in the victory parade in Tokyo. He was a partner and practiced law with Morris & Garlove (later known as Morris, Garlove, Waterman & Johnson) and Seiller Waterman LLC, and was an authority on taxation and estate planning. He served as president of the Louisville School for Autistic Children, president of the Standard Country Club of Louisville and was a member of The Temple. “Grand,” as his grandchildren dubbed him, loved the practice of law, playing golf, Sunday night family dinners, reading, watching C-SPAN and professional baseball, and many dogs. He was a Gentleman, the smartest person his family knew and a valuable source of prophetic advice. **The above information for Irwin Gerald Waterman was pulled from version that appeared in The Courier-Journal from June 21–June 23, 2016. To access the full obituary, visit: http://www.legacy.com/obituaries/louisville/obituary.aspx?pid=180391092.**

**Harold G. Wren,** passed away peacefully on June 13, 2016, at age 95. Hal, as everyone knew him, had a rich and full life. He was born in Norfolk, Va., and raised there and in Brooklyn, N.Y. He served as a Japanese language officer in the U.S. Navy in the Pacific during World War II, later rising to the rank of Captain in the U.S. Naval Reserves. He received his undergraduate and law degrees from Columbia University and a Master’s degree from Yale University, going on thereafter to work in Japan on a Fulbright Scholarship. For most of his professional career, he worked as a law professor and dean of three law schools, including the Brandeis School of Law at the University of Louisville. A specialist in tax and trust estates law, he authored several books in his areas of expertise, as well as one on of counsel relationships between lawyers and law firms. In 1948 he married Beryl Bird, who joked that the bird married the wren. Their long marriage ended with her sudden death in 2006. She, like her husband, was a wonderful person. She also was a wonderful hostess and accomplished cook. They had two sons who both survive Hal, James Wren II, also a naval reserve officer and lawyer, who lives in Williamsburg, Ky., and Geoffrey Wren, also a lawyer and an administrative law judge, who lives in Portland, Oregon. Hal is survived by four grandchildren, Joshua, Joanna, and Jonathan in Williamsburg, Ky., and Angela in Ellicott City, Md. **The above information for Harold G. Wren was pulled from version that appeared in The Courier-Journal on July 3, 2016. To access the full obituary, visit: http://www.legacy.com/obituaries/louisville/obituary.aspx?n=harold-g-wren&pid=180482700.**
WILLIAM P. “BILL” MULLOY, was born June 7, 1927, the son of the late Lelia DeJarnette and Joseph Patrick Mulloy. On July 5, 2016, Bill left this mortal coil, rejoined family and friends, and now he sees face to face and knows fully as he is fully known. He was born and lived his entire life in Louisville, a community that he loved and appreciated for the blessings and opportunities it afforded him. His love of this great country was evident in his words and deeds throughout his life. A member of “The Greatest Generation,” he served his country in World War II as a staff sergeant in the United States Army, reveled in the vindication of freedom marked by his celebrating VE Day in Germany, and then was subsequently honored to serve his country when assigned to the Judge Advocate General’s Corp from May, 1945 until the conclusion of the Nuremberg trials in 1946. The opportunity his country afforded him to serve opened the doors of the world to him and engendered his life-long love of travel, art, music, and the many and diverse cultures of this world. Mulloy valued the education that he received at Louisville Male High School and the University of Louisville where he obtained his undergraduate and JD degrees. Two of his great joys were serving as a Trustee at the University of Louisville and being elected a member of the Male High School Hall of Fame. He was a voracious reader and a student of history, particularly fascinated by the genius of the founding fathers’ belief in this radical notion that a self-governing people could form a republic that exalted individual rights and the rule of law. That interest translated itself into a 54-year professional career as a solo practitioner of law, rendering service to countless folks regardless of their station in life. He was proud of the legal profession as a means of serving others, encouraging his sons and grandchildren to pursue a legal education, serving on countless committees of the Louisville and Kentucky Bar associations, mentoring young lawyers and teaching countless legal education programs. The above information for William P. “Bill” Mulloy was pulled from version that appeared in The Courier-Journal from July 7 to July 9, 2016. To access the full obituary, visit: http://www.legacy.com/obituaries/louisville/obituary.aspx?pid=180579310.

MURRAY J. GREENWALD, 84, died Friday, June 10, 2016, at Kindred Hospital. He was born in Philadelphia but always considered himself a Kentucky native as he lived here since he was six months old. He was born March 20, 1932, to the late Lottie Marder & A. Herman Greenwald. The son of a Polish immigrant butcher, Greenwald was a self-made man who graduated from the University of Louisville School of Law in 1955, having received his Juris Doctor without an undergraduate degree in 3½ years. He was universally considered the patriarch of the local real estate bar and was proud of his decades of service for the Jefferson County Public Defender’s Office, the Louisville Bar Foundation and the Louisville Bar Association. In his chosen career and throughout life, he practiced law and lived by a high standard of ethics which he counted upon all those close to him to adhere. His son, Bart Greenwald, followed in his footsteps into the legal profession and is a founding partner at the Louisville law firm of Duncan Galloway Egan Greenwald PLLC. The above information for Murray J. Greenwald was pulled from version that appeared in The Courier-Journal from June 29 to July 1, 2016. To access the full obituary, visit: http://www.legacy.com/obituaries/louisville/obituary.aspx?pid=180484343.

The Honorable EARL O’BANNON of Louisville died Tuesday June 14, following a brief illness and full life on earth. He is survived by his daughters Elizabeth O’Bannon, of Shreveport La., Kristin Black, and her husband, Troy of Louisville. His grandchildren, Aiden James Poling of Shreveport, and Bryan Earl Shipley of Louisville; his extended family including Kaylen, Ashley, and Anthony Black; and Sibby Black, all of Louisville, along with many dear nephews and nieces. He was born Dec. 19, 1934 in Louisville to Earl and Gladys O’Bannon, and had one sister, Martha Dean Stepro, who recently preceded him in death. He graduated with a law degree from the University of Louisville. He married Karin Springsted, and the couple lived in Baltimore where he served in the JAG core of the U.S. Army. After his service, the couple returned to Louisville, where he practiced law until his election to the Circuit Court in 1975, where he served as a well-respected judge until his retirement in 1995. The above information for Judge Earl O’Bannon was pulled from version that appeared in The Courier-Journal on June 16, 2016. To access the full obituary, visit: http://www.legacy.com/obituaries/louisville/obituary.aspx?pid=180342437.

Nonprofit Organization Law Can Be Complex
My Practice Is Limited to Advising Nonprofits and The Professionals Working With Them

Nonprofit Organization Types
- Colleges and Universities
- Hospitals & Rural Health Care Organizations
- K-12 School Districts
- Associations of Members
- Social Service Agencies
- Government Boards and Agencies
- Airport Boards
- Economic Development Districts

Conley Salyer, Attorney, J.D., LL.M.; Examiner, Malcolm Baldrige National Quality Award (MBNQA), csalyer@nonprofitattorney.net, (859) 281-1171, 710 E. Main Street, Lexington, KY 40502, www.nonprofitattorney.net This is an advertisement.
ON THE MOVE

The law firm of O’Bryan, Brown & Toner, PLLC, announces that Caitlin E. Housley, Jordan A. Stanton and Jared C. Lockwood have joined their Louisville office as associate attorneys. Housley graduated, summa cum laude, with a B.A. in communication studies from Saint Mary’s College, Notre Dame. She went on to earn her law degree from the University of Kentucky College of Law, where she served as the online content manager for the Kentucky Law Journal. She was a judicial intern for Chief Judge Karen C. Caldwell at the United States District Court for the Eastern District of Kentucky and Judge Sara Combs at the Kentucky Court of Appeals. She also previously served as a risk management extern at UK HealthCare. Her primary area of practice is insurance defense litigation with a focus on medical malpractice. Stanton obtained his undergraduate degree from the University of Kentucky, where he majored in business management and business marketing, graduating summa cum laude. He received his J.D. from the University of Kentucky College of Law, where he was a production editor on the Kentucky Journal of Equine, Agriculture, & Natural Resources Law. He is licensed in both Kentucky and Indiana. Stanton’s primary area of practice is insurance defense litigation with an emphasis on medical malpractice. Lockwood recently joined the firm after moving to Louisville from Denver. He has extensive experience representing professionals, hospitals, corporations and individuals in a wide variety of civil litigation. His practice includes defense of physicians and hospitals in medical negligence claims, defense of lawyers and law firms in legal malpractice claims, contract disputes, insurance bad faith issues, personal injury defense, and general civil litigation. He graduated from Emory University in Atlanta and earned his J.D. from Gonzaga University School of Law. He is licensed in both Colorado and Kentucky.

Priddy, Cutler, Naake & Meade, PLLC, announces the relocation of its offices to Suite 300, 2303 River Road, Louisville, KY 40206 in the Spring River Office Park. As a litigation firm, its lawyers concentrate in representing employees in a wide variety of employment disputes, injured workers and others with personal injuries, labor unions, social security disability claimants, individuals seeking employee benefits, teachers, nurses and law enforcement officers.

Stites & Harbison, PLLC, welcomes attorney Joseph Morris to the Louisville office. He joins the intellectual property & technology service group as a registered patent attorney. His practice focuses on patent prosecution with an emphasis on computer applications and electrical design. He provides counsel on patent validity and enforceability as well as portfolio management. Morris earned his J.D. from the Chicago Kent College of Law at the Illinois Institute of Technology. He also earned a Master of Engineering in computer engineering and computer science from the University of Louisville’s Speed Scientific School. Morris assisted in the development of applications, database design and user interfaces.

Mazanec, Raskin & Ryder Co., L.P.A., (MRR), announced that Teresa T. Combs has joined the firm as a partner in its Lexington office. For more than 30 years, Combs has concentrated her practice in the area of school law. She has represented school districts as both in-house and local counsel. For the past 20 years, she has worked for school districts across the Commonwealth of Kentucky as an attorney with the Kentucky School Boards Association. She is known for her experience in the areas of special education and disability law, including the Americans with Disabilities Act (ADA), the Individuals with Disabilities Education Act (IDEA), and Section 504 of the Rehabilitation Act. Combs earned her J.D. at the University of Kentucky College of Law and her B.A. at Pikeville College.

Kidd Law Office PLLC announces the opening of an additional office in Lexington. Alongside the Nicholasville office, the Lexington office will provide convenient service to clients in Fayette County and surrounding areas. Elizabeth Kidd continues to focus on family law and criminal defense. Kidd Law Office PLLC, 101 W. Short Street, Lexington, KY 40507, Phone: (859) 881-0505, kidd-law.com.

Have an item for Who, What, When & Where? The Bench & Bar welcomes brief announcements about member placements, promotions, relocations and honors. Notices are printed at no cost and must be submitted in writing to: Managing Editor, Bench & Bar, 514 West Main Street, Frankfort, KY 40601 or by email to sroberts@kybar.org. Digital photos must be a minimum of 300 dpi and two (2) inches tall from top of head to shoulders. There is a $10 fee per photograph appearing with announcements. Paid professional announcements are also available. Please make checks payable to the Kentucky Bar Association.
Kentucky Legal Aid announced that the agency’s President and Executive Director, Scott Crocker, will resign his position effective Jan. 15, 2017. Crocker has directed the regional legal aid program for 30 years. During this time, the program has expanded from an 11 county office to a 35 county regional agency with four full-time offices and three satellite locations. The program currently employs 38 staff members including 18 attorneys and nine paralegals. Kentucky Legal Aid is a non-profit public interest law firm that provides civil (non-criminal) legal help to low-income families and individuals, disabled people, and seniors. Kentucky Legal Aid provides legal assistance in civil cases without cost to clients. A hiring committee has been selected to begin the process of recruiting and hiring a new executive director.

Walters Meadows Richardson, PLLC, announces that Kellie Collins, Gregory Funfsinn and Joshua Leckrone have been named as members in their firm. Kellie Collins was licensed in 2008 and is an alumna of the University of Kentucky College of Law. Gregory Funfsinn was licensed in 2012 and is an alumnus of the Chicago-Kent College of Law in Chicago, Ill. Joshua Leckrone was licensed in 2005 and is an alumnus of the University of Cincinnati College of Law in Cincinnati, Ohio.

Adams, Stepner, Woltermann & Dusing, PLLC, announces that Thomas (Tommy) J. Simendinger has joined the firm as an associate attorney. He will practice in corporate and commercial transactions in the firm’s business representation practice group. Admitted to the Kentucky Bar in 2016, he has experience working with start-up entities through the Northern Kentucky Tri-County Economic Development Corporation (NKY Tri-Ed) and the Uptech accelerator program. In addition to these experiences, he has worked for numerous sports organizations, including the NBA’s Indiana Pacers, Kentucky Speedway, and USA Track and Field, in legal and business capacities. He received his B.A. degree in political science from the University of Kentucky (summa cum laude), and he graduated from the Indiana University Maurer School of Law with a J.D. in 2015.

Mark A. MacDonald, Timothy B. Spille, and Jade A. Stewart have joined the Cincinnati and Fort Mitchell offices of Reminger Co., LPA. MacDonald is a shareholder with the firm. He focuses his practice on medical malpractice defense and insurance defense litigation matters. Spille is a shareholder with the firm. He is a litigation, insurance coverage, construction, and small business attorney representing clients in state and federal courts throughout Ohio, Kentucky and Indiana. Stewart has both trial and appellate experience in various areas of civil litigation in Kentucky and Ohio. She has also represented employers throughout the multiple levels of the workers’ compensation system.

Stites & Harbison, PLLC, welcomes attorney Rebecca Wichard to the Lexington office. She joins the construction and litigation & appeals service groups. Wichard’s construction practice will focus on advising clients throughout all phases of construction projects including planning, contract drafting and negotiation, project administration, and disputes. She will represent owners, contractors and subcontractors in construction disputes and litigation. She earned her J.D. from the University of Kentucky College of Law, cum laude and Order of the Coif, and was an editor for the *Kentucky Law Journal*. Wichard is involved in various community organizations in Lexington and is a member of the board of directors of OperaLex.

Boehl Stopher & Graves is pleased to announce that Justin Wallen has joined the firm as an associate attorney. Wallen’s practice will focus on defense litigation in areas of bad faith, personal injury, product liability, and no fault claims. Wallen received his J.D. from the University of Kentucky.

Chalmers Pak & Burch LLC of Atlanta, a litigation and political law firm, announces that Michael G. Adams and Jessica A. Burke have joined the firm, renamed Chalmers Pak Burch & Adams LLC, as members. Adams, a graduate of the University of Louisville and Harvard Law School, is a nationally recognized election law attorney, who advises and represents candidates, PACs, issue groups, donors and political consultants, in federal, state and local elections. He also counsels clients in other constitutional, regulatory and litigation matters.

Burke, a graduate of the University of Kentucky and Notre Dame Law School, represents clients in litigation matters in state and federal court. She also counsels candidates, political committees, and advocacy groups regarding compliance with state and federal campaign and election laws and advises healthcare providers on regulatory compliance issues.

Stoll Keenon Ogden PLLC (SKO) welcomes Walter R. Byrne to the firm’s office in Lexington. SKO’s members unanimously elected Byrne as a member of the firm. Byrne’s legal career spans more than three decades and includes representing banks and financial institutions in Kentucky, Indiana and Tennessee. His practice has focused on financial institution law and regulation, mergers and acquisitions, chartering financial institutions, and corporate law. Byrne earned a bachelor’s degree and master’s degree in business administration.
from the University of Kentucky, and his law degree from the University of Louisville Louis D. Brandeis School of Law. Byrne’s community involvement currently includes serving as a director of Peoples Exchange Bank of Beattyville and The Lexington Club.

Rebecca Simpson joined English, Lucas, Priest & Owsley, LLP, (ELPO), in Bowling Green, as a senior attorney in April. Due to her hiring, ELPO is adding family law and an increased mediation practice to the firm’s portfolio of services. For ELPO, Simpson will be practicing in estate law, family law and will offer mediation services. Her family law practice will encompass adoption, business valuation, child support, custody issues, divorce, parent relocation and property division, among other services. She will also provide mediation services in family law and estate cases. She graduated from Western Kentucky University with highest honors and earned a full academic scholarship to Brandeis School of Law at the University of Louisville. Recently, she was appointed by Chief Justice John D. Minton, Jr., to serve as trial commissioner in disciplinary proceedings brought by the Kentucky Bar Association.

Stites & Harbison, PLLC, welcomes attorney Allyson True Cook. She is counsel to the firm based in the Covington office. Cook is a member of the construction and real estate service groups. Cook’s practice focuses on construction, real estate, commercial finance and business litigation. She is a past board chair for NorthKey Community Care, Inc., and presently serves as a member of the board. Cook is also on the board of directors for Northern Kentucky MHMR Properties and is an advisory board member for the Women’s Business Center of Kentucky. She is a member of the Northern Kentucky Chamber of Commerce where she is involved with several committees. Cook is also active with the Ohio River Valley Women’s Business Council which is a regional partner organization with the Women’s Business Enterprise National Council (“WBENC”). Cook earned her J.D. from the University of Kentucky College of Law.

Ty Smith has joined Morgan & Morgan, where he will lead the medical malpractice section of the Louisville office. Smith will continue his personal injury practice with a focus on healthcare litigation in Kentucky and Indiana. He is a 2005 graduate of the University of Kentucky College of Law. He is a sustaining member of the Indiana Trial Lawyers Association and is a member of the board of governors for the Kentucky Justice Association.

Wendell L. Jones announces the formation of Kentucky Surety & Construction Law, PLLC, (www.ksuretylaw.com). Through the new entity, Jones will continue his current commercial litigation practice with an emphasis on fidelity and surety law as well as general construction defect cases. Prior to venturing out on his own, Jones was with the surety boutique firm of Alber Crafton, PSC. A 1994 graduate of the Brandeis School of Law at the University of Louisville, Jones has been practicing commercial, surety and construction law throughout the Commonwealth since being admitted in 1994. Jones is also admitted to the federal bars of the Southern District of Indiana and the Northern District of Florida.

Dinsmore & Shohl LLP’s Louisville office continues its strategic expansion. Partners Gregory A. Compton and Christopher M. George join Dinsmore from Middleton Reutlinger. Compton and George focus their practice on corporate services and commercial real estate development and transactions, assisting their clients in navigating through all stages of the business life cycle. Compton is a past chairman of the Board of Goodwill Industries of Kentucky, and is a life member and past director of the Aero Club of Louisville. He earned his J.D. from the University of Cincinnati College of Law, and received his B.B.A. in finance from the University of Kentucky. George earned his J.D. from the University of Louisville Brandeis School of Law, and received his B.A. from the University of Kentucky.

Reminger Co., LPA, announces that Kenneth Finley has joined their Lexington office. Finley has represented small to large corporations, as well as individuals, throughout Kentucky and Ohio in areas including complex business and commercial litigation, construction, and products liability. He has also represented clients in various transactional matters including mergers and acquisitions, commercial real estate, fraud investigations, and compliance matters. He is a member of the Kentucky and Ohio Bar associations, serves on the board of Sunflower Kids, Inc., and also on the Community Investments Cabinet of the United Way of the Bluegrass.

Sheldon “Shelly” G. Gilman was named recipient of the Wilson Wyatt Award during the Community Foundation of Louisville’s (CFL) 13th Annual Professional Advisor Seminar. The award honors Gilman for his role as a professional advisor who demonstrates excellence in philanthropic advising. The Wilson Wyatt Award is named for the co-founder of the Community Foundation of Louisville and honors a philanthropic-minded professional advisor who is committed to giving back to the community. Gilman is an active lawyer in the Louisville community at the law firm of Lynch, Cox, Gilman & Goodman PSC. He received his undergraduate degree from Ohio University and his law degree from Case Western Reserve University. Gilman serves on a number of committees, including the Kentucky Bar Association’s Ethics Committee and its “Hotline” Committee.

Quintairos, Prieto, Wood & Boyer, P.A., announces that David Kaiser has been invited to join the Claims and Litigation Management Alliance (CLM). The CLM is a nonpartisan alliance comprised of
thousands of insurance companies, corporations, corporate counsel, litigation and risk managers, claims professionals and attorneys. Through education and collaboration the organization's goals are to create a common interest in the representation by firms of companies, and to promote and further the highest standards of litigation management in pursuit of client defense. Selected attorneys and law firms are extended membership by invitation only based on nominations from CLM Fellows.

Bingham Greenebaum Doll LLP partner John S. Lueken has been appointed to serve as a member of the Indiana Continuing Legal Education Commission's Advisory Panel for Attorney Specialization for the specialty area of trust and estate planning.

Joseph L. Fink III has been re-elected as secretary and member of the executive committee, Southeastern Conference. He continues to serve as the faculty athletic representative at the University of Kentucky where he is professor of pharmacy law and policy at the UK College of Pharmacy as well as Kentucky Pharmacists Association Professor of Leadership at the University.

Heather Whitney Culp, UK Law ’97, is president-elect of the Mecklenburg County Bar based in Charlotte, N.C. Culp will serve as the 116th president during the 2017-2018 fiscal year and is the eighth woman to serve in this role. The Mecklenburg County Bar is one of the largest local bars in the country, with over 5200 attorneys serving on more than 50 committees, sections, boards and divisions. Culp is also serving a three-year term on the North Carolina Board of Governors and is a member of the Lawyers Mutual Insurance Company of North Carolina’s Charlotte Community Board. She is a partner with the Charlotte law firm of Essex Richards, P.A. and practices primarily in the areas of bankruptcy, debtor/creditor relations and business disputes.

Bingham Greenebaum Doll LLP partner Eric L. Ison has been reappointed by the Supreme Court of Kentucky to serve as chair of the Kentucky Board of Bar Examiners. This marks his 12th year as chair of the board and 20th year serving as the bar examiner for the Fourth Supreme Court District.

Quintairos, Prieto, Wood and Boyer, P.A., announces Melissa S. Gruner, partner in the Louisville office, has successfully completed training and assessment to become certified in electronic discovery. Gruner’s training and certification encompasses all phases of electronic discovery including: information governance, identification, preservation, collection, processing, review, analysis and production. Gruner was also named to the 2016 Kentucky Rising Stars List.

Managing Intellectual Property magazine has named three Stites & Harbison, PLLC, attorneys to the 2016 “IP Stars” list. The publication recognizes the most highly regarded intellectual property attorneys in the U.S. The star attorneys are nominated by their peers and in-house counsel. The 2016 edition of “IP Stars” further separates honorees into two categories: Trademark Stars and Patent Stars. The following is a listing of Stites & Harbison’s Trademark Stars and Patent Stars:

**Kentucky (Trademark Stars):** Joel T. Beres and David W. Nagle, Jr.

**Kentucky (Patent Stars):** Joel T. Beres, Mandy Wilson Decker, David W. Nagle, Jr.

R. Kent Westberry, a partner with Landrum & Shouse LLP, has been elected a fellow to the American Board of Criminal Lawyers, an honorary society for outstanding Criminal Trial Lawyers with admission to fellowship by invitation only. To qualify for admission, a member must have at least 10 years of criminal trial experience and have tried at least 50 trials of which 30 were felony jury trials. Westberry served as president of the Kentucky Bar Association in 2004-2005 and also served as an Assistant United States Attorney for the Western District of Kentucky. He currently serves as alternate to the chair for the Kentucky Judicial Conduct Commission.

Georgetown attorney and award-winning author Milton C. Toby recently was elected vice president of the American Society of Journalists and Authors (ASJA), the nation’s leading professional organization of independent nonfiction writers. Based in New York City, ASJA is a primary voice in representing freelancers’ interests, serving as spokesman for their right to control and profit from uses of their work in both traditional and new media.
Leslie Rudloff was selected as a speaker for Harvard Law School’s “The Animal Welfare Act at Fifty” conference on Dec. 2, 2016. The conference will bring experts together to assess the first 50 years of the Animal Welfare Act (AWA) and consider recommendations for the future.

Dinsmore & Shohl LLP’s Michael P. Abate has been named to Louisville Business First’s 2016 Forty Under 40 list. The 40 young professionals who make up the 2016 class share the goal of making a difference in Louisville through their community service efforts and in their hard work. Abate chairs the firm’s appellate practice group and is a member of the litigation and health care departments. He also serves as the vice chair of the board of directors on Seven Counties Services.

Thomas E. Rutledge, a member of Stoll Keenon Ogden PLLC, has been appointed to the Committee on Corporate Laws of the Section of Business Law, American Bar Association. His six-year term begins this September. The committee’s 25 members include some of the country’s leading practitioners and legal scholars. Among the committee’s duties is drafting the Model Business Corporation Act, which is utilized (in whole or in part) in 46 U.S. jurisdictions—including Kentucky—and is a model for corporate law throughout the world. The committee’s work also includes drafting the Model Nonprofit Corporation Act. Since 1990, Rutledge has devoted his practice to business organization law and counseling business owners about the operation of their companies. He currently chairs the Committee on LLCs, Partnerships and Unincorporated Entities of the ABA Section of Business Law, serves as a Commissioner to the Uniform Laws Commission and is a member of the American Law Institute.

Wyatt, Tarrant & Combs, LLP, announces that Chris Brooker has been selected by the Leadership Louisville Center for its Leadership Louisville Class of 2017. Brooker is a partner in the firm and focuses his law practice in the area of litigation and dispute resolution. Brooker has served as a board member of Junior Achievement of Kentuckiana since 2014. He is a graduate of both the Leadership Kentucky and Ignite Louisville programs. Brooker has been recognized by Kentucky Super Lawyers® as a Rising Star and by Benchmark Litigation as a Future Star. He received his B.A. from the University of North Carolina at Asheville, magna cum laude, and his J.D. from the University of North Carolina School of Law, with honors.

Thoroughbred Charities of America (TCA) elected Stites & Harbison, PLLC, attorney Bob Beck, Jr., to its board of directors. Beck is a member (partner) based in Stites & Harbison’s Lexington office. He is a transactional lawyer with a practice focus in equine law, corporate law and mergers and acquisitions. Beck served as chairman of the Kentucky Horse Racing Commission (2008-15). His community involvement has also included memberships on the board of directors of the Kentucky Horse Park Foundation, the Lexington Philharmonic, the Fayette County Bar Association and the Lexington Arts and Cultural Council. He is a founder, member of the board of directors and former president of the American College of Equine Attorneys.

The University of Kentucky Alumni Association Distinguished Service Awards are presented annually to honor and recognize those who have provided extraordinary service to the university and the association. John Ryan, of Louisville, was recently awarded one of these awards. Ryan graduated from the University of Kentucky with two degrees, earning a BBA in Finance in 1992 and a MBA in 1995. He also earned a J.D. from the Brandeis School of Law, graduating cum laude, in 2000. He is senior vice president at Stock Yards Bank where he manages the credit department and performs various legal functions. Ryan’s previous experience includes director of development for Churchill Downs where he managed mergers and acquisitions and negotiated the Derby TV contract and capital markets transactions. Ryan also serves as a member of the UK College of Law Continuing Legal Education faculty where he has taught various financial institution law.
topics. Ryan has served on the board of directors for the Greater Louisville UK Alumni Club since 2004. He was chairman of the annual Greater Louisville UK Alumni Club Kickoff Luncheon and is past president of the Young Alumni.

**Teresa A. Daniel, JD, PhD and Gary S. Metcalf, PhD**, announce the publication of their newest book titled “Stop Bullying at Work: Strategies and Tools for HR, Legal, & Risk Management Professionals (Second Edition).” The book was released by SHRM Books in May and is available via SHRM, Amazon, and other major booksellers.

Eight of the Middleton Reutlinger's attorneys were named to *Managing Intellectual Property’s* 2016 “IP Stars” in the recently published 2016 Managing Intellectual Property IP Handbook. The rankings are based on extensive research among thousands of IP practitioners by a team of researchers. To be included, attorneys must have received a large number of recommendations from peers and clients. Middleton Reutlinger attorneys recognized as “IP Stars” include: *Amy Berge, James Cole, Robert Eichenberger, Julie Gregory Ray, James Higgins, Dennis Murrell, John Salazar, and Robert Theuerkauf.*

**Donald L. Miller, II**, managing partner, of Quintairos, Prieto, Wood and Boyer, P.A., has been selected to the 2016 list as a member of the Nation’s Top One Percent by the National Association of Distinguished Counsel (NADC). NADC is an organization dedicated to promoting the highest standards of legal excellence. This elite class of advocates consists of the finest leaders of the legal profession from across the nation. Miller was also named to the 2017 Super Kentucky Lawyers List.

For the fourth consecutive year, *Benchmark Litigation Magazine* has named Stoll Keenon Ogden (SKO) attorney *Lea Pauley Goff* to its list of the nation’s Top 250 Women in Litigation. Goff is a member of SKO’s Louisville office and chairs the bankruptcy & financial restructuring practice. She also serves on the firm’s board of directors. Goff earned the Benchmark Litigation honor for her work in bankruptcy and commercial litigation.

**Vince Aprile**, who practices with Lynch, Cox, Gilman and Goodman, P.S.C., was the keynote continuing legal education presenter on appellate oral argument during the conference in Tempe, Ariz., in June. He also presented a session on appellate brief writing at a special interactive one-day, six hour program at the Arizona Public Defender’s Association’s annual conference in Tempe, Ariz., in June. He also presented a session on appellate oral argument during the conference.

The Energy & Mineral Law Foundation (EMLF) recently honored *Karen J. Greenwell* with the 2016 John L. McClaugherty Award for distinguished service at the Foundation’s 37th Annual Institute. The award honors an EMLF member “who exemplifies a continuing involvement and commitment to the EMLF, the legal profession, and the natural resources industry.” Greenwell is a trustee of the Energy & Mineral Law Foundation, a director of the Kentucky Oil and Gas Association, and an adjunct professor at the University of Kentucky College of Law. Greenwell is a partner in Wyatt’s Lexington office and serves as co-team leader of the firm’s natural resources & environmental law practice. She earned her J.D., *with highest honors*, from the University of Kentucky.

Kyle McDonald, CEO of Argent Financial Group and chairman of Argent Trust Company, announced the election of *Alan N. Linker* to the board of directors for Argent Trust Company. Linker, an attorney, member and management committee member at Seiller Waterman LLC, in Louisville, brings almost 40 years of business, trust and estate planning experience. He holds a *cum laude* law degree from the University of Louisville Louis D. Brandeis School of Law and a bachelor’s degree in accounting with distinction from Indiana University. Linker is a member of the Kentucky and Louisville Bar associations.

**Wm. T. (Bill) Robinson III**, member-in-charge of the Florence, Ky., office of Frost Brown Todd LLC has been named chair of the American Bar Association’s (ABA) Standing Committee on the American Judicial System. Robinson has been an active member of the ABA for more than 30 years and has served in numerous leadership positions, including as 135th president (2011-12), treasurer (2005-08), 10 years on the ABA Board of Governors, more than 30 years in the ABA House of Delegates, and nine years as a Kentucky State Delegate. He was recently named chairman of the National Judicial College (NJC) Board of Trustees, the nation’s leading provider of education to judges across America and abroad. Robinson served as the 50th president of the Kentucky Bar Association (1985-86); president of the Kentucky Bar Foundation (1988-89); founding chair (1986-88) of the Kentucky Interest on Lawyers Trust Accounts (IOLTA) Fund; and president of the National Caucus of State Bar Associations (1995-96). He currently also serves on the Boards of the American Inns of Court Foundation and the American Bar Foundation.
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